the country share the same problem. Our intention is to join forces with interested parties elsewhere to insure the prompt action that is needed to avoid a crisis in the VA system.

Mr. Speaker, there were approximately 125 signatures on the statement and Dr. Saunders indicated that he did not include the full list of those who signed the copy he sent to me. The conditions are described in very specific terms and are of a nature to demand immediate attention.

SENATE—*Saturday, February 28, 1970*

(Legislative day of Thursday, February 26, 1970)

The Senate met at 10 o'clock a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. RUSSELL).

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Almighty God, our help in ages past, hear us as we lift our morning prayer to Thee. Come upon our Nation by the mighty power of Thy Holy Spirit to cleanse and renew our inmost life. Make us a pure, orderly, and godly people. Assist the strong that they may help the weak. Teach us to live to serve others and thus fulfill Thy divine law. Keep us God fearing, industrious, and trustful of one another. Hear our most earnest prayer that we may keep Thy laws and manifest Thy love in daily word and deed.

In the Redeemer's name. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Journal of the proceedings of Friday, February 27, 1970, be approved.

The PRESIDENT pro tempore. Without objection, it is so ordered.

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business not to exceed 15 minutes, with statements therein limited to 3 minutes.

The PRESIDENT pro tempore. Without objection, it is so ordered.

STAR URGES RATIFICATION OF GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, yesterday, in an editorial entitled "The 21-Year Procrastination," the Washington Evening Star voiced its support for ratification of the human rights convention outlawing genocide. It also, I might add, voiced its indignation over the fact that this Chamber has not seen fit "to put the United States on a par with the other civilized nations of the world by ratifying the agreement."

Mr. President, as the Star editorial has so forcefully pointed out, the eyes of the world are upon us. Why has this Nation, supposedly the moral and political leader of the Western World, supposedly a civilized nation, been so reluctant to add its support to an agreement that would outlaw this most dastardly crime? This is the question the world is now asking, and has asked throughout the 21-year period of procrastination the Star referred to.

I again urge the Senate to move immediately to consider and ratify this agreement. The world is watching, and waiting, for our response.

Mr. President, I ask unanimous consent that the Washington Evening Star editorial of February 28, 1970, entitled "The 21-Year Procrastination" be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

THE 21-YEAR PROCRASTINATION

Twenty-one years ago, the United Nations prepared an international agreement outlawing genocide. The United States played a leading role in the drafting of the document. One year later the agreement was submitted to the Senate for ratification. A foreign relations subcommittee held some hearings. And all progress toward ratification halted at that point.

Now, President Nixon has asked the Senate to dig out the document, to dust it off, and to put the United States on a par with the other civilized nations of the world by ratifying the agreement.

One might assume that the request would pose no problems, that once the committee overcame its inertia, the Senate would lose no time in putting this country on the side of the angels. One could be wrong. For the fact is that ratification was vigorously opposed two decades ago—and still is—by the defenders of states' rights. The opposition is of such intensity that, unless the President applies some real pressure, the United States could find itself in the agonizingly embarrassing position of rejecting the international condemnation of genocide.

In addition to the small but powerful bloc of senatorial states-righters, ratification has been consistently opposed by the American Bar Association. This year, the ABA's house of delegates voted by a narrow margin to continue its opposition, despite arguments for ratification by former Attorney General Katzenbach and Solicitor General Griswold. A former ABA president raised the specter that an individual might charge his own government with genocide and bring the United States before the World Court.

The delegates, by a margin of four votes, chose to overlook the effect that continued failure to ratify would have on world opinion, and to concentrate instead on the possibility that a troublemaker might cause the government some difficulty.

The congressional arguments against ratification are based on the fact that such international agreements supersede existing national law. Thus, in the eyes of guardians of state sovereignty, the agreement would in effect place in the hands of the federal government a possible threat to the states' jurisdiction over murder cases.

This legalistic sophistry is valid if it is agreed that (a) the federal government might frivolously employ the agreement in an attempt to usurp the power of the states in capital cases, or (b) that states might undertake a program of genocide.

Neither possibility exists outside of some mildly paranoid imaginations. The attorney general sees no constitutional conflict with the agreement. The secretary of state has urged that the pact be ratified. The Senate should take the President's advice and end the 21-year procrastination. And the President should disregard the nightmares of the ABA. He should back up his request with sufficient prodding to make sure that the Senate moves briskly—and in the right direction.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BURDICK in the chair). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

REPORT OF THE DEPARTMENT OF AGRICULTURE

A letter from the Assistant Secretary of Agriculture, transmitting, pursuant to law, a report on the orderly liquidation of stocks of agricultural commodities held by the Commodity Credit Corporation and the expansion of markets for surplus agricultural commodities, dated January 1970 (with an accompanying report); to the Committee on Agriculture and Forestry.

REPORT ON HIGHWAY TRUST FUND

A letter from the Secretary of the Treasury, transmitting, pursuant to law, a report on the financial condition and results of the operations of the highway trust fund, dated June 30, 1969 (with an accompanying report); to the Committee on Finance.

PROPOSED LEGISLATION EXTENDING FOR A 10-YEAR PERIOD EXISTING AUTHORITY OF THE ADMINISTRATOR OF VETERANS' AFFAIRS TO MAINTAIN OFFICES IN THE PHILIPPINES

A letter from the Administrator, Veterans' Administration, transmitting a draft of proposed legislation to extend for a period of 10 years the existing authority of the Administrator of Veterans' Affairs to maintain offices in the Republic of the Philippines (with accompanying papers); to the Committee on Finance.

REPORT ON ACTIVITIES OF THE EAST-WEST CENTER IN HONOLULU

A letter from the Secretary of State, transmitting, pursuant to law, a report on the

activities of the East-West Center in Honolulu, for the year ended June 30, 1969 (with an accompanying report); to the Committee on Foreign Relations.

REPORTS OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on opportunities for improving management of excess property transferred to the military affiliate radio system, Department of Defense, dated February 27, 1970 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on questions regarding mortgage loan insurance ceilings and land appraisals for large cooperative housing communities, Department of Housing and Urban Development, dated February 27, 1970 (with an accompanying report); to the Committee on Government Operations.

REPORT ON DISPOSAL OF EXCESS PROPERTY IN FOREIGN COUNTRIES

A letter from the Secretary, Health, Education, and Welfare, reporting, pursuant to law, on the disposal of excess property in foreign countries, for the calendar year 1969; to the Committee on Government Operations.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the PRESIDENT pro tempore:

A joint memorial of the Legislature of the State of Colorado; to the Committee on Commerce:

"HOUSE JOINT MEMORIAL 1001

"MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION PRESCRIBING MORE STRINGENT EMISSION STANDARDS FOR MOTOR VEHICLES

"Whereas, The pollution of the air is becoming an increasingly critical problem; and

"Whereas, There is a substantial proportion of air pollutants which is attributable to motor vehicle exhaust emissions; and

"Whereas, The general assembly recognizes that the manufacture distribution and sale of motor vehicles is an interstate business and is therefore properly subject to national regulation and it is desirable to have a comprehensive, national system to take into account regional problems such as the high altitude conditions which make present national standards largely ineffective in Colorado; and

"Whereas, Since the motor vehicle industry presently has the technological capability to produce engines which emit far fewer air pollutants, there is no reason for any further delay in establishing an effective program for control of exhaust emissions; now, therefore,

"Be It Resolved by the House of Representatives of the Forty-seventh General Assembly of the State of Colorado, the Senate concurring herein, That the congress of the United States be memorialized to enact legislation prescribing stringent emission standards for motor vehicles and that such legislation take into account the unique problems of high altitude areas in order to provide effective emission controls at high altitudes as well as at sea level; and

"Be It Further Resolved, That copies of this Memorial be transmitted to the President of the United States, the President of the Senate of the Congress of the United States, the Speaker of the House of Representatives of the Congress of the United States, and each member of Congress from the State of Colorado.

"MARK A. HOGAN,
"President of the Senate.
"COMFORT W. SHAW,
"Secretary of the Senate.
"JOHN D. VANDERHOOF,
"Speaker of the House of Representatives.
"LORRAINE F. LOMBARDI,
"Chief Clerk of the House of Representatives."

Resolutions of the House of Representatives of the Commonwealth of Massachusetts; to the Committee on the Judiciary:

"RESOLUTION MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION AMENDING THE 'PLEDGE OF ALLEGIANCE TO THE FLAG' TO READ 'EQUAL JUSTICE FOR ALL'

"*Resolved,* That the Massachusetts House of Representatives respectfully urges the Congress of the United States to enact legislation amending the 'Pledge of Allegiance to the Flag' by inserting before the word 'justice' the word 'equal' so as to read 'with liberty and equal justice for all'; and be it further

"*Resolved,* That copies of these resolutions be transmitted forthwith by the Secretary of the Commonwealth to the President of the United States, the presiding officer of each branch of Congress and to the members thereof from this Commonwealth.

"House of Representatives, adopted, February 17, 1970.

"WALLACE C. MILLS, *Clerk.*

"Attest:

"JOHN F. K. DAVOREN,
"Secretary of the Commonwealth."

EXTENSION OF VOTING RIGHTS ACT OF 1965—REPORT OF A COMMITTEE

Mr. EASTLAND. Mr. President, as chairman of the Committee on the Judiciary, and pursuant to the order of the Senate agreed to on December 16, 1969, I return to the Senate H.R. 4249, to extend the Voting Rights Act of 1965, without action by the Committee on the Judiciary.

BILLS INTRODUCED

Bills were introduced, read the first time and, by unanimous consent, the second time, and referred as follows:

By Mr. FONG:

S. 3525. A bill for the relief of Juliette Soares Menezes; to the Committee on the Judiciary.

By Mr. GRIFFIN:

S. 3526. A bill to provide more effective means for protecting the public interest in national emergency disputes involving the transportation industry and for other purposes; to the Committee on Labor and Public Welfare.

(The remarks of Mr. GRIFFIN when he introduced the bill appear later in the RECORD under the appropriate heading.)

S. 3526—INTRODUCTION OF THE EMERGENCY PUBLIC INTEREST PROTECTION ACT OF 1970

Mr. GRIFFIN. Mr. President, on behalf of the administration, I am today introducing the Emergency Public Interest Protection Act of 1970.

Generally, the bill would provide additional protection for the public in the case of labor disputes in the transportation industries which imperil the national health or safety.

Mr. President, procedures now available for protecting the national health or safety in the transportation industries are not adequate.

For a number of years, I have been deeply concerned about the need to reform procedures available in dealing with industrywide strikes and lockouts. Indeed, on a number of occasions I have introduced a resolution calling for establishment of a joint congressional committee to study serious problems and to seek changes in the law.

Mr. President, I believe the administration bill represents a sound and constructive step, and I hope it will have early consideration in the Congress.

Mr. President, I ask unanimous consent that an explanatory statement as well as the text of the bill be printed in the RECORD.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the bill and explanatory statement will be printed in the RECORD.

The bill (S. 3526) to provide more effective means for protecting the public interest in national emergency disputes involving the transportation industry and for other purposes, was received, read twice by its title, referred to the Committee on Labor and Public Welfare, and ordered to be printed in the RECORD, as follows:

S. 3526

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Public Interest Protection Act of 1970."

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds:

(1) That present procedures for dealing with national emergency disputes under the Railway Labor Act tend to encourage resort to governmental intervention in such disputes rather than utilization of the collective bargaining processes to solve labor-management disputes;

(2) That present procedures for dealing with disputes in the transportation industry, in general, have proved insufficient to prevent serious disruptions of transportation services.

(b) The Congress declares it to be the purpose and policy, through the exercise by Congress of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible, that no strike or lockout in the transportation industry or a substantial part thereof will imperil the national health or safety—

(1) by providing a single set of procedures for dealing with national emergency disputes in the transportation industries;

(2) by establishing procedures which will encourage the parties to make effective use of various private collective bargaining techniques to resolve disputes;

(3) by establishing procedures which will both protect the public interest and recognize the interests of the parties involved in the dispute;

(4) by providing the President with appro-

priate alternative means for dealing with national transportation emergency disputes;

(5) by amending the Railway Labor Act to eliminate reliance upon governmental machinery or intervention for adjusting grievances and for collective bargaining in the railroad and airline industries; and

(6) by establishing a National Special Industries Commission to study and make recommendations concerning those industries which are or may be particularly vulnerable to national emergency disputes.

TITLE I—AMENDMENTS TO THE LABOR-MANAGEMENT RELATIONS ACT RELATING TO EMERGENCY DISPUTES IN THE TRANSPORTATION INDUSTRY

SEC. 101. (a) Title II of the Labor-Management Relations Act, as amended, is redesignated as title II part A.

(b)(1) Section 208(a) is amended by substituting a colon for the period at the end thereof and by adding the following proviso:

"*Provided*, That when such petition is sought to enjoin a strike or lockout in an industry subject to part B of this title it shall be heard and determined by a three-judge district court in accordance with section 2284 of title 28, United States Code."

(2) Section 208(c) is amended by substituting a semicolon for the period at the end thereof and adding the following: "except that where the proviso in section 208 (a) is applicable, appeal shall be to the United States Supreme Court in accordance with section 1253 of title 28, United States Code."

(c) Section 212 is hereby repealed.

SEC. 102. Title II of the Labor-Management Relations Act, as amended, is hereby further amended by adding a new part II B at the end of part II A to read as follows:

"PART B—ALTERNATIVE PROCEDURES FOLLOWING INITIAL 80-DAY COOLING-OFF

"SEC. 213. APPLICABILITY OF THIS PART.—This Part shall apply only to the following transportation industries: (1) railroads, (2) airlines, (3) maritime, (4) longshore, and (5) trucking.

"SEC. 214. If no settlement is reached before the injunction obtained pursuant to section 208 of this Act is discharged, the President may, within 10 days, invoke any one, but only one, of the procedures set forth in sections 217, 218, and 219 of this Act with regard to a national emergency dispute subject to this part.

"SEC. 215. Notice of which procedure the President has selected must immediately be transmitted to the Congress, unless the Congress has adjourned or is in a recess in which case such notice shall be transmitted as soon as Congress reconvenes. Such procedure shall remain in effect, unless within 10 days after the President invokes such procedure, either House passes a resolution stating that that House rejects the procedure invoked by the President.

"SEC. 216. If either House passes a resolution pursuant to subsection (c) of this section rejecting the procedure invoked by the President, or, if the President does not choose to invoke any of the procedures set forth in sections 217, 218, and 219 of this Act, the President shall submit to the Congress a supplement report including such recommendations as he may see fit to make.

"SEC. 217. ADDITIONAL COOLING-OFF PERIOD.—The President may direct the parties to the controversy to refrain from making any changes, except by agreement, in the terms and conditions of employment for a specified period of not more than 30 days from the date of his direction. During such period the parties shall continue to bargain collectively, and the board of inquiry may continue to mediate the dispute with the assistance of, and in close coordination with, the director of the Federal Mediation and Conciliation Service.

"SEC. 218. PARTIAL OPERATION.—(a) The President may appoint a special board of three impartial members for the purpose of having the board make the following determinations:

"(1) Whether and under what conditions a partial strike or lockout in lieu of a full strike or lockout in an entire industry or substantial part thereof could take place without imperiling the national health or safety; and

"(2) Whether, under such conditions, the extent of such partial strike or lockout would, in the judgment of the board, appear to be sufficient in economic impact to encourage each of the parties to make continuing efforts to resolve the dispute.

"(b)(1) If the board makes a determination that there are conditions under which a partial strike or lockout can take place in accordance with the criteria specified in subsection (a), it shall issue an order specifying the extent and conditions of partial operation that must be maintained: *Provided that*, in no event, shall the order of the board place a greater economic burden on any party than that which a total cessation of operations would impose.

"(2) If the board makes a determination that a partial strike or lockout cannot take place in accordance with such criteria, it shall submit a report to the President.

"(c) The parties shall not interfere by resort to strike or lockout with the partial operation ordered by the board. The board's order shall be effective for a period determined by the board, but not to exceed one hundred and eighty days.

"(d) The board's order or any modification thereof shall be conclusive unless found arbitrary or capricious by the district court which granted the injunction pursuant to section 208 of this Act.

"(e)(1) The board shall issue its order no later than thirty days from the date of its appointment by the President, unless the parties, including the Government, agree to an extension of time but such extension shall reduce pro tanto the maximum effective period of the board's order.

"(2) On notice to the parties, the board may at any time during the period of partial operation modify its order as it deems necessary to effectuate the purposes of this section.

"(f) Until the board makes its determination and during any period of partial operation ordered by the board no change, except by agreement, shall be made in the terms and conditions of employment. If the board determines that the implementation of any particular term of the existing terms and conditions of employment is inconsistent with the conditions of partial operation, it may order the suspension or modification of that term but only to the extent necessary to make it consistent with the conditions of partial operation.

"(g) The following rules of procedures shall be applicable to the board's functions under this subsection:

"(1) NOTICE OF HEARING.—Upon appointment by the President the board shall promptly notify and inform all parties, including the Government, of the time, place, and nature of the hearings, and the matters to be covered therein.

"(2) HEARING TO BE PUBLIC.—The board shall hold public hearings, unless it determines private hearings are necessary in the interest of national security, or the parties, including the Government, agree to present their positions in writing. The record made at such hearing shall include all documents, statements, exhibits, and briefs, which may be submitted, together with the stenographic record. The board shall have authority to make whatever reasonable rules are necessary for the conduct of an orderly public hearing. The board may exclude persons other than the parties at any time when in its judgment the expeditious inquiry into the dispute so requires.

"(3) PARTICIPATION BY BOARD IN THE HEARING.—The board, or any member thereof, may, on its own initiative, at such hearing, call witnesses and introduce documentary or other evidence, including a plan for partial operation, and may participate in the examination of witnesses for the purpose of expediting the hearing or eliciting material facts.

"(4) PARTICIPATION BY PARTIES IN HEARING.—The parties, the Government, or their representatives shall be given reasonable opportunity; (A) to be present in person at every stage of the hearing; (B) to be represented adequately; (C) to present orally or otherwise any material evidence relevant to the issues including a plan for partial operation; (D) to ask questions of the opposing party or a witness relating to evidence offered or statements made by the party or witness at the hearing, unless it is clear that the questions have no material bearing on the credibility of that party or witness or on the issues in the case; (E) to present to the board oral or written argument on the issues.

"(5) STENOGRAPHIC RECORDS.—An official stenographic record of the proceedings shall be made. A copy of the record shall be available for inspection by the parties.

"(6) RULES OF EVIDENCE.—The hearing may be conducted informally. The receipt of evidence at the hearing need not be governed by the common law rules of evidence.

"(7) REQUESTS FOR THE PRODUCTION OF EVIDENCE.—The board shall have the power of subpoena. It shall request the parties to produce any evidence it deems relevant to the issues. Such evidence should be obtained through the voluntary compliance of the parties, if possible.

"(h) If a settlement is reached at any time during the hearing, the board shall adjourn the hearing and report to the President within 10 days the fact that a settlement has been reached and the terms of such settlement.

"(i)(1) Members of the board shall receive compensation at a rate of up to the per diem equivalent of the rate for GS–18 when engaged in the work of the board as prescribed by this Act, including traveltime, and shall be allowed travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently and receiving compensation on a per diem, when actually employed, basis.

"(2) For the purposes of carrying out its functions under this Act the Board is authorized to employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently, while so employed.

"SEC. 219. FINAL OFFER SELECTION.—(a)(1) The President may direct each party to submit a final offer to the Secretary of Labor within three days. Each party may at the same time submit one alternative final offer. The Secretary of Labor shall transmit the offers to the other parties simultaneously.

"(2) If a party or parties refuse to submit a final offer, the last offer made by such party or parties during previous bargaining shall be deemed that party's or parties' final offer.

"(3) Any offer submitted by a party pursuant to this section must constitute a complete collective bargaining agreement and resolve all the issues involved in the dispute.

"(b) The parties shall continue to bargain collectively for a period of five days after they receive the other parties' offers. The Secretary of Labor may act as mediator during the period of the final offer selection proceedings.

"(c) If no settlement has been reached before the end of the period prescribed in subsection (b) of this section, the parties may within two days select a three-member panel to act as the final offer selector. If the parties are unable to agree on the composition of the panel, the President shall appoint the panel.

"(d) No person who has a pecuniary or other interest in any organization of employees or employers or employers' organizations which are involved in the dispute shall be appointed to such panel.

"(e) The provisions of section 218(h) and 218(i) (1) and (2) of this Act shall apply to the panel.

"(f) The panel shall conduct an informal hearing in accordance with section 218(g) of this Act insofar as practicable, except that

"(1) the Government shall have no right to participate; and

"(2) the thirty-day period in which the panel shall complete its hearings and reach its determination shall run from the time that the President directed the parties to submit final offers.

"(g) The panel shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed by this section.

"(h) From the time of appointment by the President until such time as the panel makes its selection, there shall be no communication by the members of the panel with third parties concerning recommendations for settlement of the dispute.

"(i) Beginning with the direction of the President to submit final offers and until the panel makes its selection, there shall be no change, except by agreement of the parties, in the terms and conditions of employment. In no instance shall such period exceed thirty days.

"(j) The panel shall not compromise or alter the final offer that it selects. Selection of a final offer shall be based on the content of the final offer and no consideration shall be given to, nor shall any evidence be received concerning, the collective bargaining in this dispute including offers of settlement not contained in the final offers.

"(k) The panel shall select the most reasonable, in its judgment, of the final offers submitted by the parties. The panel may take into account the following factors:

"(1) past collective bargaining contracts between the parties including the bargaining that led up to such contracts;

"(2) comparison of wages, hours and conditions of employment of the employees involved, with wages, hours and conditions of employment of other employees doing comparable work, giving consideration to factors peculiar to the industry involved;

"(3) comparison of wages, hours and conditions of employment as reflected in industries in general, and in the same or similar industry;

"(4) security and tenure of employment with due regard for the effect of technological changes on manning practices or on the utilization of particular occupations; and

"(5) the public interest, and any other factors normally considered in the determination of wages, hours and conditions of employment.

"(l) The final offer selected by the panel shall be deemed to represent the contract between the parties.

"(m) The determination of the panel shall be conclusive unless found arbitrary and capricious by the district court which granted the injunction pursuant to section 208 of this Act.

"SEC. 220. (a) Any board or panel established under part B of title II of this Act may act by majority vote.

"(b) A vacancy on any such board or panel shall not impair the right of the remaining members to exercise all of the powers of such board or panel. In case of a vacancy due to death or resignation, the President may appoint a successor to fill such vacancy.

"SEC. 221. Whenever the term 'Government' is used in title II of this Act it shall be deemed to mean the United States Government acting through the Attorney General or his designee."

TITLE II—AMENDMENTS TO THE RAILWAY LABOR ACT

SEC. 201. The National Mediation Board is hereby renamed the Railroad and Airline Representation Board, and the functions of the Railroad and Airline Representation Board shall be those specified in Sec. 202(f) of this Act.

SEC. 202. The Railway Labor Act is further amended as follows: (a) Section 2 Seventh of Title I is amended to read as follows:

"Seventh. No carrier, its officers or agents, or representatives shall change or seek to change the rates of pay, rules, or working conditions as emobdied in agreements or arrangements except in the manner prescribed in such agreements and in Title I, section 6 of this Act, as amended."

(b) Section 3 First (i) of Title I is amended by striking the period following the words "upon the disputes" and inserting thereafter: "*Provided, however,* That all such disputes shall no longer be referred to the Adjustment Board commencing 60 days after the effective date of this amendment to the Act.

"All such disputes which are not so referred within such period and all such disputes arising thereafter shall be submitted to arbitration in accordance with the following procedure. Upon failing to reach a satisfactory adjustment at the level of discussion hereinbefore mentioned, the parties shall within 5 days seek to reach mutual agreement on the selection of an arbitrator. If the parties fail to reach agreement within such period, the Federal Mediation and Conciliation Service shall submit to the parties a list of five qualified arbitrators. Each party shall alternately reject a different arbitrator named on the list until one abitrator remains who shall thereupon arbitrate the dispute. To the extent that the parties are unable to agree to the rules for arbitration, including the distribution of costs, the arbitrator shall make all necessary rules therefor.

"All disputes which have been referred to the Adjustment Board may be removed by the grievant to the arbitration process herein if the dispute is not then being heard by the Adjustment Board.

"The aforementioned method of arbitration shall prevail with respect to such disputes until such time as the collective bargaining agreements between the parties contain no-strike, no-lockout clauses and provisions for grievance machinery terminating in final, binding arbitration.

"The Adjustment Board shall be dissolved after it has processed to completion all of the disputes before it or upon two years from the effective date of this Amendment to the Act, whichever first occurs. If all the disputes before the Adjustment Board have not been processed to completion by the time of the Board's dissolution date, all such disputes shall be removed by the grievant to the arbitration process hereinabove described."

(c) Section 3 Second of Title I is amended by adding the following language at the end of the first paragraph following the words "jurisdiction of the Adjustment Board.":

"The provisions of paragraph (1) of this section, as amended, shall apply in the manner and to the same extent with respect to system, group or regional boards of adjustment."

(d) Section 3 Second of Title I is amended by adding the following language at the end of section 3 Second following the words "awards of the Adjustment Board.":

"No dispute which has not been referred to a special board of adjustment by the effective date of this Amendment to the Act may be referred to such special board thereafter."

(e) Section 4 Second of Title I is amended by striking the word "mediation" in the third sentence of paragraph Second and inserting therefor the word "representation".

(f) Both paragraphs of Section 4 Fifth of Title I are amended to read as follows:

"Fifth. The functions of the Representation Board shall be generally those relating to the determination of bargaining representatives including duties particularized in Title I, section 2 Eighth and Ninth of this Act, as amended."

(g) Section 4 of Title I is further amended by adding the following paragraphs after paragraph Fifth:

"Sixth. All functions of the National Mediation Board which in the judgment of the President are primarily related to mediation shall be transferred to the Federal Mediation and Conciliation Service.

"Seventh. All cases which are being mediated by the National Mediation Board on the effective date of this Amendment to the Act shall be transferred to the Federal Mediation and Conciliation Service no later than 30 days after the effective date of this amendment to the Act. All cases arising thereafter under this Act, as amended, requiring mediation, shall be subject to the jurisdiction of the Federal Mediation and Conciliation Service.

"Eight. All unexpended appropriations for the operation of the National Mediation Board that are available at the time of the dissolution of the Board shall be apportioned between the Railroad and Airline Representation Board and the Federal Mediation and Conciliation Service by the President according to the relative needs of each based on the division of functions prescribed herein."

(h) Section 6 of Title I is amended to read as follows:

"Section 6. Carriers and representatives shall give the other at least 60 days written notice of an intended modification or termination in agreements or arrangements affecting rates of pay, rules or working conditions. The party desiring such change or termination shall also notify the Federal Mediation and Conciliation Service of the existence of a dispute within thirty days after such notice to the other party, provided no agreement has been reached by that time. The parties shall continue in full force and effect, without resorting to strike or lockout or other economic coercion, all the terms and conditions of the existing agreement or arrangement for a period of sixty days after such notice is given or until the expiration date of the agreement containing the rates of pay, rules, or working conditions sought to be changed, provided such agreement exists, whichever occurs later.

"With respect to rates of pay, rules or working conditions for which there exists no fixed

expiration date, the time for serving the sixty-day notice in the first instance, and the first instance only, shall be established by agreement of the parties to the arrangement; if they cannot agree, the party seeking to serve the sixty-day notice may invoke the arbitration procedure prescribed in section 3 First (i), as amended, in order to fix the date on which such notice may be served. In making his decision, the arbitrator shall take into account the probable intention of the parties as revealed by custom and practice with respect to past adjustment of rates of pay, rules or working conditions. In no case, however, shall the arbitrator decide that the time for serving the first sixty-day notice shall be more than two years after the enactment of this amendment to the Act.

"The parties shall bargain collectively with respect to such intended modification or termination which means that the parties shall have the mutual obligation to meet at reasonable times and confer in good faith with respect to rates of pay, rules, and working conditions or the negotiation of an agreement and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession."

(i) Section 201 of title II is amended by striking the words "except the provisions of section 3 thereof,".

(j) Section 202 of title II is amended (1) by striking the words ", except section 3 thereof,", and (2) by adding the following language after the end of the first sentence therein:

"The functions and duties of the Representation Board, as prescribed in title I, section 4, shall apply as well to carriers by air and their employees or representatives."

(k) Section 204 of Title II is amended by striking the period following the words "upon the disputes" at the end of the first sentence and inserting thereafter ": *Provided, however,* That all such disputes shall no longer be referred to such Adjustment Boards commencing 60 days after the effective date of this amendment to the Act but shall be handled in the manner specified in title I, section 3 first (i), as amended. Such adjustment boards shall be dissolved after they have processed to completion all of the disputes before them or upon two years from the effective date of this amendment to the Act, whichever first occurs. If all the disputes before such adjustment boards have not been processed to completion by the time of the Boards' dissolution date, all such disputes shall be removed by the grievant to the arbitration process prescribed in title I, section 3 first (i), as amended."

TITLE III—SPECIAL INDUSTRIES COMMISSION

SEC. 301. The National Special Industries Commission is hereby established. The Commission shall be composed of seven members all of whom shall have a background by reason of education or experience in labor relations.

(a) The Commission members shall be appointed by the President for a term not to exceed two years.

(b) The Commission members shall receive compensation at a rate of up to the per diem equivalent of the rate for GS–18 when engaged in the work of the Commission, together with any necessary travel and subsistence expenses.

(c) The Commission shall be authorized to study and investigate industries (determined by the Secretary of Labor to be particularly vulnerable to national emergency disputes) combinations or groups thereof, and problems relating thereto, including but not limited to—

(1) the ways and means by which the collective-bargaining process might be improved, altered, revised, or supplemented so as to avoid or minimize strikes and lockouts which effect an entire industry, or region, or a substantial part thereof;

(2) the effectiveness and usefulness of various forms of mediation, conciliation, arbitration, and other possible procedures and methods for aiding or supplementing the collective-bargaining process;

(3) the administration, operation, and possible need for revision of this Act and its effect on collective bargaining, strikes, or lockouts affecting an entire industry or region, or substantial portion thereof;

(4) such other problems and subjects which relate in any way to collective bargaining, strikes, or lockouts as the Commission deems appropriate.

(d) A vacancy in the membership of the Commission shall not affect the powers of the remaining members to execute the functions of the Commission, and shall be filled in the same manner as the original appointment was made. The President shall designate a chairman and a vice chairman from among its members.

(e) In carrying out its duties, the Commission or any duly authorized subcommittee thereof, is authorized to hold such hearings or investigations, to sit and act at such places and times, to require by subpoena or otherwise the attendance of such witnesses and production of such books, papers, and documents, to administer such oaths, to take such testimony, to procure such printing and binding, to make such expenditures as it deems advisable. The Commission may make such rules respecting its organization and procedures as it deems necessary: *Provided, however,* That no recommendation shall be reported from the Commission unless a majority of the Commission assent. Subpoenas may be issued over the signature of the chairman of the Commission or by any member designated by him or by the Commission, and may be served by such person or persons as may be designated by such chairman or member. The chairman of the Commission or any member thereof may administer oaths to witnesses. The cost of stenographic services shall be fixed at an equitable rate by the Commission. Members of the Commission, and its employees and consultants, while traveling on official business for the Commission may receive either a $50 per diem allowance or their actual and necessary expenses provided an itemized statement of such expenses is attached to the voucher.

(f) The Commission is empowered to appoint and fix the compensation of such experts, consultants, technicians, and staff employees as it deems necessary and advisable. The Commission is authorized to utilize the services, information, facilities, and personnel of the departments and establishments of the Government.

SEC. 302. The Commission shall, within a period of 2 years from the date of the appointment of its members, report to the President concerning its findings. Such report shall also contain any recommendations for dealing with problems caused by any weaknesses in the collective bargaining process, including any recommendations for legislation which the Commission deems necessary to the solution of such problems. The Commission may also recommend, if it deems it advisable, legislation to bring other industries within the coverage of Part B of title II of the Labor-Management Relations Act, as amended.

TITLE IV—MISCELLANEOUS PROVISIONS

SUITS BY AND AGAINST REPRESENTATIVES

SEC. 401. (a) Suits for violation of agreements or arrangements between carriers or common carriers by air and their employees or the representatives thereof, as those terms are defined in the Railway Labor Act, or between any such representatives, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any representative of employees, as defined in the Railway Labor Act, and any carrier or common carrier by air, as defined in the Railway Labor Act, shall be bound by the acts of its agents. Any such representative may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against such representative in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purpose of actions and proceedings by or against representatives in the district courts of the United States, district courts shall be deemed to have jurisdiction of a representative (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a representative, in his capacity of such, shall constitute service upon the representative.

(e) For the purposes of this section in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

REPEAL

SEC. 402. Sections 5, 7, 8 (both), 9 and 10 of title I, and sections 203 and 205 of title II of the Railway Labor Act, as amended, are hereby repealed.

INAPPLICABILITY OF THE NORRIS-LAGUARDIA ACT

SEC. 403. The provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall not be applicable to any judicial proceeding brought under or to enforce the provisions of this Act.

RIGHTS OF EMPLOYEES

SEC. 404. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quiting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act.

RAILROAD UNEMPLOYMENT INSURANCE

SEC. 405. Section 4(a)(v) of the "Railroad Unemployment Insurance Act of 1938," 52 Stat. 1098, is hereby amended by inserting a semicolon following the words "at which

he was last employed" and striking the remaining language in the paragraph.

APPROPRIATIONS

SEC. 406. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEPARABILITY

SEC. 407. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

The material furnished by Mr. GRIFFIN is as follows:

EXPLANATORY STATEMENT OF THE EMERGENCY PUBLIC INTEREST PROTECTION ACT OF 1970

A bill to protect the public interest whenever a threatened or actual strike or lockout in the transportation industry imperils the national health or safety, and for other purposes

I. GENERAL

The bill would provide additional protections for the public interest for those labor disputes in the transportation industries which imperil the national health or safety. Because current procedures for protecting the national health or safety in the transportation industries have not proved effective, the bill provides additional options to the President that carefully balance the needs of the public and the rights of free collective bargaining.

The bill would also amend the Railway Labor Act to promote greater utilization of private collective bargaining procedures rather than reliance upon governmental intervention.

In addition, the bill would provide for a Special Industries Commission to study labor relations in those industries which are particularly vulnerable to national emergency disputes and make recommendations concerning such industries.

II. AMENDMENTS TO THE LABOR-MANAGEMENT RELATIONS ACT

The bill would not change the existing national emergency dispute provisions of Title II of the Labor-Management Relations Act as they apply to industries other than transportation.

It would make the national emergency provisions of the Labor-Management Relations Act applicable to all transportation industries. It does this by repealing the emergency procedures of the Railway Labor Act and bringing the railroads and airlines under the basic emergency provisions now applicable to other industries with certain changes.

In recognition of the special nature of the transportation industries, the President would be empowered to use, in addition to the basic emergency dispute provisions of the Labor-Management Relations Act, one of three new options for dealing with national emergency disputes in the transportation industries. These optional procedures could be used if a transportation national emergency dispute was still unresolved after the 80-day cooling-off period provided in the Labor-Management Relations Act has expired. Because of the potential impact of these options, the basic 80-day injunction would have to be issued by a three judge court in the case of national emergency disputes in the transportation industries. Transportation is defined to include railroads, airlines, maritime (including longshore), and trucking.

The President would be empowered to choose any *one* of these new procedures—but if the one chosen does not result in the resolution of the dispute, the provisions in current law for a report to the Congress would remain in effect.

III. DESCRIPTION OF OPTIONAL PROCEDURES APPLICABLE TO THE TRANSPORTATION INDUSTRIES

Extension of the cooling-off period

There are occasions when a dispute may be readily resolved by the parties by a mere extension of the cooling-off-period. In such a situation the President would be authorized to extend the cooling-off period, with continued bargaining between the parties for a period of up to thirty days.

Partial operation

Even when the shutdown of an entire industry imperils the national health and safety, it may be possible to make an acceptable accommodation between the right to strike or lockout and the national good. Such an accommodation could rest in arranging for operation of only an essential part of the industry or by requiring production or service only to a critical class of customers.

It would be unwise and difficult to attempt the division of an industry into essential and nonessential components in the critical period preceding the issuance of an injunction. But if the parties do not reach agreement in the 80-day cooling-off period, partial operation deserves consideration and the President would be authorized, as one of his options, to appoint a special board and direct them to review the feasibility of partial operations. Any party or any member of the board could present to the board a plan defining the strike or lockout action that would be consistent with the public interest. The board, after appropriate hearings in which the government would be a party to protect the public interest, could adopt or modify the plan. Before approving the plan, the board would also have to find that the partial strike or lockout is sufficiently extensive to encourage resolution of the dispute; in other words, that sufficient economic pressure will remain on both sides to encourage an early resolution.

The board's decision must be made within 30 days and during that period the status quo must be maintained. Partial operation pursuant to the board's decision would be limited to a maximum of 6 months.

Final Offer Selection

As one of the President's options following the eighty-day cooling-off period, the parties would be required to submit their final proposals for full resolution of the controversy. The parties would be given 3 days in which to submit two final offers. If any party failed to submit a final offer or offers, the last offer made during bargaining would be deemed its final offer.

As a first step following this submission, to the Secretary of Labor, the parties would be required to meet and bargain for five days, with or without mediation by the Secretary.

As a second step, the parties would be given an opportunity to select a panel to act as "Final Offer Selector." If the parties were unable to select the panel, a panel composed of three neutral members would be appointed by the President. The panel would hold hearings and determine which of the final offers constituted the final and binding resolution of the issues. In reaching its determination, the panel could not choose any settlement other than those represented by the final offers. The panel's function would be limited to choosing the more reasonable of the final offers. The bill specifies the criteria to be used by the panel in reaching its decision.

The effect of this procedure would be to encourage the parties to arrive at a settlement in negotiations. Should negotiations fail, it would insure that in the course of a dispute the parties draw closer together rather than pull further apart.

The panel's choice would become the contract between the parties.

This option has the virtue of providing finality, yet it does not contain those aspects of compulsory arbitration which are inconsistent with free collective bargaining.

IV. AMENDMENTS TO THE RAILWAY LABOR ACT

Though the emergency disputes provisions of the Railway Labor Act have been the most conspicuous example of procedures undermining rather than strengthening collective bargaining, there are other provisions of that Act which place an excessive reliance on Governmental intervention in matters which should be left to the parties. These can be summarized under two headings: (a) the procedure for the adjustment of grievances under collective bargaining contracts, and (b) procedures for the negotiation of new agreements. The basic deficiency of the first is that it provides for *Governmental* arbitration as a final step, and of the second, that government procedures have tended to substitute for expeditious private settlement of collective bargaining disputes.

The interpretation and application of agreements

The Railway Labor Act presently places upon those within its coverage an obligation to make every effort to negotiate and maintain collective bargaining agreements and to settle all disputes peaceably. "Minor" disputes are those which include interpretation of provisions in existing collective bargaining agreements. Those in the railroad industry are processed through grievance machinery established by and between the parties, but, failing resolution, are submitted to the National Railroad Adjustment Board. In the case of air carriers, final resolution of minor disputes has been delegated to system or regional adjustment boards, no national board having been established by the National Mediation Board.

The inordinate delays which now attend the use of present railroad grievance machinery under the Act have proven burdensome and unfair to both labor and management. At the beginning of 1968, the Board had a backlog of over 5,300 cases—it was still over 5,000 cases at the end of that year.

Complete overhaul of the existing grievance procedure is needed. Such action would include the abolition of the NRAB, and with regard to air carriers, system and regional Boards of Adjustment. Grievances should not be settled by procedures established by statute but by those most concerned with their equitable and expeditious settlement, the parties themselves.

The Act now encourages the voluntary settlement of grievances but does not implement this clear mandate of sound policy because it establishes a governmental body to make the ultimate decision. Legislation should not itself provide the machinery—rather it should encourage the parties to include in their collective bargaining agreements a full and adequate grievance procedure up to and including final and binding arbitration.

The bill proposes the following changes in an effort to eliminate reliance on governmental machinery in the case of "minor disputes." The National Railroad Adjustment Board, system and special boards of adjustment would be phased out over a two-year period. In their stead, the parties would be encouraged in their collective bargaining agreements to provide for grievance machinery terminating in final and binding arbitration, together with provisions for no-

strike and no-lockout clauses. Until such time as the collective bargaining agreements contain such provisions, "minor disputes" would be resolved by private arbitration with the arbitrator selected by the parties on the basis of consent or elimination of alternates until one arbitrator remains. No strikes over such minor disputes would be permitted during this period.

Negotiation of new agreements

The Railway Labor Act, as it has been administered and interpreted by the courts over the years, establishes a formalized, complex, and excessively lengthy procedure for the negotiation of new agreements. There are no specified time limits in this process and the parties are not free to resort to self-help until the National Mediation Board determines that an amicable settlement will not be reached through mediation. As a result, contracts have no effective termination date but instead remain in effect until the procedures for amending them have been complied with and this can often be well beyond the intended expiration date of the contract.

The result has often been that these procedures become a hindrance rather than an aid to voluntary negotiation. New procedures are needed so that governmental mediation will assist the parties in resolving their disputes rather than merely being preliminary to further governmental action.

In order to remove the parties' dependence on governmental intervention in "major disputes," the bill would overhaul the present procedures in several respects. The notice-of-contract modification or termination provisions would be changed so as to direct the railroad and airline industries to the form of contract reopening existing in industries subject to the Taft-Hartley Act. Thus, the parties would be obliged to serve written notice of proposed contract changes on each other at least 60 days prior to the contract expiration date. The bill provides special provisions for the transition to the new method of contract reopening. At the expiration of the contract or of 60 days, whichever is later, the parties would be free to resort to self-help.

Finally, the bill would amend the Railway Labor Act so that the mediation duties of the National Mediation Board and its staff would be transferred to the Federal Mediation and Conciliation Service in order to have all mediation responsibilities under one roof. The National Mediation Board would retain its function of determining the representatives of bargaining units, but its name would be changed to the Railroad and Airline Representation Board.

V. SPECIAL INDUSTRIES COMMISSION

Experience has shown that the labor crises which affect the national health or safety tend to be concentrated in certain industries. It is essential that we determine why crises occur in one industry and not in others. The bill establishes a special commission to study labor relations in those industries which the Secretary of Labor has determined to be particularly vulnerable to the national emergency disputes. The commission would be empowered to study all the factors affecting labor relations in these industries and to make recommendations to the President as to the best way of remedying the weaknesses of collective bargaining in the industries studied, including recommendations for legislation, if appropriate. Such recommendations might include a proposal that additional industries be brought within the coverage of Part B of Title II of the Labor-Management Relations Act.

The Commission would also be authorized to study the operation of the revised emergency procedures.

VI. MISCELLANEOUS PROVISIONS

The bill would provide several important remedies for the parties. First, it would assure that collective bargaining agreements or arrangements in air and rail industries would be enforceable in federal courts. It also would make representatives suable in their capacity as such and would define the jurisdictions in which such representatives may be sued.

The Norris-LaGuardia Act is made inapplicable to any judicial proceeding brought under or to enforce the provisions of the Act. This would apply to the provisions amending the Railway Labor Act as well as the Emergency Disputes provisions.

The bill would also repeal the provisions of the Railroad Unemployment Insurance Act that makes strikers eligible for benefits if the strike is not in violation of the Railway Labor Act or of the rules of the labor organization of which he is a member. Thus strikers in the railroad industry will be disqualified from unemployment insurance benefits in accordance with the usual criteria in State unemployment insurance laws applicable to other industries.

ADDITIONAL COSPONSORS OF BILLS

S. 3503

Mr. PROXMIRE. Mr. President, I ask unanimous consent that at the next printing, the names of the Senator from Connecticut (Mr. DODD), and the Senator from Washington (Mr. JACKSON) be added as cosponsors of S. 3503, the Middle Income Mortgage Credit Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

S. 3508

Mr. PROXMIRE. Mr. President, I ask unanimous consent that, at the next printing, the names of the Senator from California (Mr. CRANSTON) and the Senator from Ohio (Mr. YOUNG) as cosponsors of S. 3508, to create a Federal Mortgage Marketing Corporation, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS OF SENATORS

SCHOOL DESEGREGATION CONTROVERSY

Mr. TALMADGE. Mr. President, Friday evening's Washington Daily News contains an excellent article on the position of the distinguished Senator from Connecticut (Mr. RIBICOFF) on the school desegregation controversy.

The Senator from Connecticut has received widespread praise for his candid, forthright, and honest approach to this problem. His address in the Senate last week on the amendment of the Senator from Mississippi (Mr. STENNIS) was courageous, indeed. The article in the Washington Daily News recounts events, from Senator RIBICOFF's personal reflections, that led to this historical speech.

I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Daily News, Feb. 27, 1970]

"WHY DON'T WE QUIT THE HYPOCRISY?" RIBICOFF TELLS HOW HE SWITCHED SCHOOL STAND

(By Richard Starnes)

Here is his own account of how Sen. Abraham A. Ribicoff, D-Conn.—a northerner with impeccable liberal credentials—decided to make common cause with a staunchly segregationist senator from the old Confederacy and help pass an amendment that many believe signals a new turning in the school integration struggle.

In essence what Sen. Ribicoff did was to support an amendment offered by Sen. John C. Stennis, D-Miss., that would make it the stated policy of the United States to enforce desegregation uniformly thruout the nation, North as well as South.

In backing the amendment ("almost totally meaningless as law," he himself concedes) Sen. Ribicoff arraigned the North for its "hypocrisy" in outlawing de jure (by law) segregation in the South while permitting de facto (in fact) segregation in the North.

"What I said in the Senate I had been basically saying to college students all over the country," Sen. Ribicoff recalled today. "The kids reacted very well to what I had to say. At the University of Texas the week before I told them that it was hypocrisy to speak of their school as being integrated when out of 35,000 students they had only 400 blacks and 200 chicanos (Mexican-Americans). They tore the roof down.

MUCH THOUGHT

Sen. Ribicoff thought all the way home from Texas about how the young people were far out in front of the aging leaders of the country ("face it, politicians in their fifties and sixties have had it.")

"I woke up that Sunday morning, Feb. 8, and thought about it some more. I thought of the changes that had taken place, of the hypocrisy, how the whites move out of a neighborhood when the blacks move in. I was also aware of the changes in the black neighborhoods; the young Negro leaders don't necessarily want integration, the old-time, NAACP leaders are tired—they want the name but not the game.

"I thought how almost invariably on every college campus the blacks are segregating themselves. I said to myself, 'the goddamned thing has failed; why don't we quit the hypocrisy?' "

Sen. Ribicoff's colloquy with himself continued while he shaved, and finally: "I said to myself, 'look, you've been saying this on campuses all over the country. Why not have the guts to say it on the floor of the Senate?' "

Sen. Ribicoff promptly phoned two aides. "I told them to meet me in the office at 11 a.m. We worked until 11 that night."

The following day Sen. Ribicoff scolded northerners for being "guilty of monumental hypocrisy in its treatment of the black man," continuing:

"Without question, northern communities have been as systematic and as consistent as southern communities in denying the black man and his children the opportunities that exist for white people.

"The plain fact is that racism is rampant thruout the country. It knows no geographical boundary and has known none since the great migration of rural blacks after World War II."

There was much more, and something like shock waves went thru the liberal establishment. Much of what the Connecticut lawmaker said had been said before, but never by one with Sen. Ribicoff's solid claim to be an ordained liberal. The speech has been

widely reprinted, and altho the Stennis amendment it helped get thru the Senate has little legal standing (and may not even survive a House-Senate conference) it is widely recognized as a key expression of the nation's disenchantment with attempts to desegregate the schools.

In recounting the difficult, years-long path that brought him to support the Stennis amendment, Sen. Ribicoff shows some of the same icy indignation he lavished on Mayor Daley.

"For a long time I have watched the basic failure of what America is trying to do in the field of integration," he says.

"I watched the destruction of the American public school system. I watched us making pawns of our children, the failure of theories that doctrinaire liberal intellectuals had hugged to their bosoms for 20 years."

Sen. Ribicoff concedes that not many doctrinaire liberals are yet ready to join him. ("People do not like to admit that they are failures.") But "at my age (he's 59) the possibility of criticism isn't so important. It is a great tragedy to look at the destruction of the American school system."

FAVORABLE REACTION

Sen. Ribicoff, a politician whose skills have made him governor, a cabinet officer and firmly entrenched U.S. senator, makes no secret of the fact that he takes professional pride in the overwhelmingly favorable reaction to his speech. He names one very liberal senator who will probably never support him in public, adding: "But his AA (administrative assistant) said to my AA, 'my senator says he sure wishes we had made that speech.' "

"I think I have hit an exposed nerve," Sen. Ribicoff continues. "Every place you go people talk about nothing else. The thing won't die. At dinner the other night I sat next to the wife of a liberal editorial writer who has been taking me to task for it, and his wife said she had been taking her husband to task for what he was writing about me. She said she had told her husband: 'You know what he's saying is true. Look at us—we send our four children to private school.' "

While he disclaims any "pat answers, and panaceas," Sen. Ribicoff has a clear vision of where he thinks racial mixing in the schools will have to go if public schools are to survive. "If you take a system like the District of Columbia's, where it's 94 per cent black, not even an Einstein could make integration work. I believe where you can make it work, you should. If there is a school district 10 or 15 per cent black where schools are not integrated, I say there is something wrong. But then you get to 20 to 25 per cent black you reach a tipping point where the whites move out. It is self-defeating.

"We will have to look at every school on its own. To say you can lay down nationwide guidelines on school integration is a fraud and a sham. We have to do the hard, tough job of looking at every school in the country. Sen. (Charles R.) Percy, R-Ill., asked me: 'What do we do in Chicago, where we have 37 square miles of black neighborhoods?' I replied, 'you will just have to try to improve the schools.'

"It is going to be a hell of a tough job. And it is going to cost a lot of money."

With evident satisfaction he quotes editorials of support from two Connecticut newspapers. "We're the people he's talking about," one says. The other, while deploring the truth of what he said, applauds his candor. "From honesty there is some hope of remedy," it concludes.

NEGROES AND THE NATIONAL GUARD

Mr. KENNEDY. Mr. President, I was most disappointed to read in Thursday's New York Times that the program to increase black enlistment in the National Guard has been a dismal failure. The percentage of blacks in the National Guard, shamefully low in 1967, has decreased still further.

In 1967 the National Advisory Commission on Civil Disorders pointed out that blacks constituted only 1.24 percent of the National Guard membership, although nationally they were 12 percent of the Nation's population. Despite their recommendation and despite actions by President Johnson, the National Guard at the end of 1969 had only 5,487 blacks out of a total membership of 478,800—or a percentage of 1.15.

This article indicates that most States have extremely poor representation of blacks in their guard membership, but that "the disparity is greatest in the Deep South, where, in some States, Negroes were once formally barred from joining the National Guard." As an example, Mississippi has one black in its 11,264-man Army National Guard—or .009 percent in a State where blacks are 42 percent of the population.

Steps must be taken immediately to insure that blacks are more fully represented in the National Guard; and I strongly urge this administration to pledge itself to such action.

I ask unanimous consent that this article be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Feb. 26, 1970]

FEWER NEGROES FOUND IN GUARD; SURVEY SHOWS ENLISTMENTS ARE OFF DESPITE U.S. DRIVE

WASHINGTON, February 25.—A survey by the National Guard Bureau shows that the low rate of Negro enlistments remains virtually unchanged despite two years of official efforts at improvement.

The dismal results of a program aimed at attracting more Negroes into the Guard—an effort that former President Lyndon B. Johnson once called "a matter of highest urgency"—are evident in figures made available recently by the bureau that show there are fewer Negroes in the National Guard now than one year ago.

At the end of 1969, the combined Army and Air National Guard had a membership of 5,487 Negroes out of a total enlistment of 478,860, representing 1.15 per cent of the entire force. This compares with 5,541 Negroes at the end of 1968, when they represented 1.18 per cent of the membership.

Although National Guard officers insist that the effort to increase Negro participation has not been abandoned, there appears to be little prospect of immediate improvement. The Guard's "waiting list"—the roll of prospective volunteers—contains the names of only 1,548 Negroes out of a total of 132,167.

"For some reason, we haven't been able to get a handle on why they haven't wanted to enlist in the National Guard," said Maj. Gen. Winston Wilson of the Air Force, commander of the National Guard Bureau.

The bureau is the Pentagon headquarters for National Guard activities in 50 states, Puerto Rico and the District of Columbia.

NO FUNDS FROM CONGRESS

Some officials believe that the current antimilitary sentiment among the young may have a bearing on the problem. But the fact that Congress has not provided funds to recruit more Negroes into the Guard has been a crucial factor.

Last year, Congress was asked for $6.5-million to accelerate Negro enlistment in the Guard under a plan that would have authorized an over-strength allotment of 0.8 per cent, reserved solely for Negores.

Such a plan was carried out successfully in New Jersey, raising Negro enlistment almost 5 per cent, but Congress rejected nationwide application as "discrimination in reverse" and said the "first come, first served" principle would continue to apply to all volunteers.

The impetus to increase the number of blacks in the National Guard came after units that were almost all-white were used to quell Negro urban riots in the summer of 1967. The National Advisory Commission on Civil Disorders recommended to President Johnson that immediate steps be taken to raise Negro participation in the Army National Guard substantially beyond the 1.24 per cent it was at that time.

The Johnson Administration formulated a plan to recruit enough Negroes over five years to bring their membership to about 12 per cent of the Guard units in each state. This would have corresponded to the percentage of Negroes of military age in the population.

APPROVAL WAS NOT GIVEN

The funds to carry out such plans never received legislative approval, and defense planners did not ask Congress for similar funds for the fiscal year 1971.

"I would not say that the goals have been abandoned," General Wilson maintained. "I believe we must have Negroes in the National Guard in order to be truly representative of the community."

But, he added, Negroes must get on the National Guard's waiting lists before they can be accepted, and the long waiting period which is part of the process often discourages potential volunteers.

One program that National Guard officers feel may hold promise is an effort that will begin March 1 to recruit a greater number of experienced soldiers. Since many of these men—including Vietnam combat veterans—are Negroes, the recruiting drive may prove successful in increasing black enlistment.

Few states approach Negro representation in the Guard in proportion to their Negro population. Only three states—Illinois, Maryland and New Jersey—plus Puerto Rico and the District of Columbia had more than 3 per cent Negro membership in their National Guard units in 1969.

The disparity is greatest in the Deep South, where, in some states, Negroes were once formally barred from joining the National Guard. Alabama, with a 30 per cent Negro population, has 13 Negroes in the Army National Guard, an increase of one over 1968.

Mississippi, whose population is 42 per cent Negro, had one black in its 11,264-man Army National Guard force in 1969, the same as 1968.

"They had two at one time," General Wilson remarked wistfully as he pored over the results of the National Guard survey.

NOMINATION OF JUDGE CARSWELL TO THE SUPREME COURT

Mr. TYDINGS. Mr. President, yesterday the nomination of Judge G. Harrold Carswell, of Florida, to be an Associate Justice of the Supreme Court was reported to the Senate by the Judiciary Committee. I oppose the confirmation. My reasons are set forth in individual views. In order that they may receive wider distribution, I ask unanimous consent that they be printed in the RECORD.

There being no objection, the individual views were ordered to be printed in the RECORD, as follows:

INDIVIDUAL VIEWS OF SENATOR JOSEPH D. TYDINGS ON CONFIRMATION OF G. HARROLD CARSWELL

I have concluded that Judge G. Harrold Carswell has demonstrated neither the judicial temperament and fairness nor the professional competence commensurate with the high standard of excellence that must be demanded of a Justice of the Supreme Court. Therefore, I must oppose confirmation of the appointment.

As Chairman of the Senate Subcommittee on Improvements in Judicial Machinery, I have been very much concerned with improving the operation of our Federal judicial system. I have chaired innumerable hearings and moved a substantial legislative program dealing with the administration practices and procedures of that system, including creation of the Federal Judicial Center and the Federal Magistrate system, revision of the Federal jury selection system and development of an effective approach to multi-district litigation.

Because of this legislative background, as well as by personal inclination, I feel a deep responsibility to my colleagues and to the nation to delve deeply into issues touching upon the effectiveness of the federal judiciary. Nothing, of course, is more relevant to that effectiveness than the process of assuring that the federal bench, and in particular, the Supreme Court are manned by appointees of the highest quality.

Men appointed to the Supreme Court have for practical purposes life tenure with no effective means for discipline or removal. Their influence on our national life may well transcend that of the President who appointed them. The role of the Supreme Court in our society is too vital to be endangered by the appointment of men whose judicial temperament or professional qualifications are subject to serious doubt.

In considering those named by the President for the vacancies on the federal district and circuit courts over the past 5 years, and in considering previous nominees for the Supreme Court, I have consistently adhered to the position that, barring some unusual situation, a man selected by the President for the federal bench should be confirmed by the Senate if he has demonstrated a character beyond reproach, professional competency equal to the task set for him, and a proper judicial temperament.

By proper judicial temperament, I mean at least the ability to put aside one's own prejudices and biases so as to be able to approach every case with a fair and open mind.

These criteria are not always easy to apply. But I have made every effort to apply them in a consistent manner to those nominees whose names have been placed before the Senate.

I opposed the appointment to the District Court of Massachusetts of Francis X. Morrissey, a man sponsored by two of my closest personal friends in the Senate, because I believed that his record did not demonstrate the legal ability requisite for a federal judge. When the Governor of Mississippi, James P. Coleman, was appointed to the Fifth Circuit, I spoke in his favor on the floor of the Senate and voted to confirm, despite the firm opposition of many civil rights groups. My examination of his record convinced me that he would make a fair and objective judge. Although I had supported the initial appointment of Mr. Justice Fortas, I took the lead in calling for his resignation when the unanswered questions surrounding his nonjudicial activities cast a cloud over the reputation of the Supreme Court. I also supported President Nixon's choice of Judge Warren Burger for Chief Justice, although I have not always agreed with him on substantive issues.

Now the Senate is asked to advise and consent to the appointment of Judge G. Harrold Carswell to be an Associate Justice of the Supreme Court.

I approached the hearings on Judge Carswell's appointment seeking to learn not what he was when he delivered his infamous racial supremacy speech in 1948, but what he is in 1970, what kind of judge—what kind of man.

Unfortunately, some of the most revealing testimony was presented to the Judiciary Committee after Judge Carswell testified and the members of the Committee were not able to review it with him. A request that he be recalled was rejected. Moreover, the short, general rebuttal letter that he submitted for the record was unresponsive and unenlightening. On the whole, however, the hearings were enlightening, indeed shocking, but hardly reassuring.

I will not dwell on Judge Carswell's willingness in 1956 to lend his name and the prestige of his office as United States Attorney to an effort to circumvent the mandates of the Constitution by converting a public golf course into a private one. Nor will I attempt to analyze similar events that have come to light, such as his attempt, in 1969, to amuse the members of the Georgia Bar Association with a racial joke. These are serious matters, but not, I believe, the keys to the case against Judge Carswell.

JUDGE CARSWELL'S LACK OF JUDICIAL TEMPERAMENT

Our judicial system must accord litigants a fair hearing. Justice is not dispensed when a judge's personal views and biases invade the judicial process. In Judge Carswell's court, the poor, the unpopular and the black were all too frequently denied their basic right to be treated fairly and equitably.

Judge Carswell was simply unable or unwilling to divorce his judicial functions from his personal prejudices. His hostility toward particular causes, lawyers and litigants was manifest not only in his decisions but in his demeanor in the courtroom.

Professor Leroy Clark of New York University, who supervised the NAACP legal defense fund litigation in Florida between 1962 and 1968, called Judge Carswell

"[T]he most hostile federal district court judge I have ever appeared before with respect to civil rights matters. . . ."

"Judge Carswell was insulting and hostile. I have been in Judge Carswell's court on at least one occasion in which he turned his chair away from me when I was arguing. I have said for publication, and I repeat it here, that it is not, it was not an infrequent experience for Judge Carswell to deliberately disrupt your argument and cut across you, while according, by the way, to opposing every courtesy possible.

It was not unusual for Judge Carswell to shout at a black lawyer who appeared before him while using a civil tone to opposing counsel . . ."

"[W]*henever I took a young lawyer into the State, and he or she was to appear before Carswell, I usually spent the evening before making them go through their argument while I harassed them, as preparation for what they would meet the following day.*"

Professor John Lowenthal of Rutgers Law School recalled attending a session in Judge Carswell's chambers in 1964 in which he "can only describe his [Judge Carswell's] attitude as being extremely hostile."

"He expressed dislike at Northern lawyers . . . appearing in Florida, because . . . [they] were not members of the Florida bar".

The choice, however, was between "Northern lawyers or no lawyers" for Professor Lowenthal's clients who had been arrested for trespass while attempting to assist sharecroppers to register to vote.

Norman Knopf, a Justice Department attorney, testifying under subpoena, who had worked with Professor Lowenthal as a volunteer in 1964, corroborated Professor Lowenthal's recollections.

"Judge Carswell made clear, when he found out that he was a northern volunteer and that there were some northern volunteers down, that he did not approve of any this voter registration going on . . . It was a very long strict lecture about northern lawyers coming down and not members of the Florida Bar and meddling down here and arousing the local people, and he in effect didn't want any part of this, and *he made it clear that he was going to deny all relief that we requested.*"

Judge Carswell's manifest intention to deny all relief did not represent an idle threat. Professor Lowenthal's clients had been tried in a state court and imprisoned in a county jail when a local judge had refused to recognize the removal jurisdiction of Judge Carswell's court. As Professor Lowenthal pointed out, "[I]t was evident to all those with experience in Northern Florida that it was not safe for voter registration people to be in local jails." Nevertheless, Judge Carswell's attitude and actions were one of delay and harassment.

Indeed, when Professor Lowenthal's predecessor in the case, Ernst H. Rosenberger, had initially sought to remove it from the state court, he had been required to pay a filing fee in Judge Carswell's court despite the governing decision of the Fifth Circuit in *Lefton* v. *Hattiesburg*, 333 F. 2d 280, that no such fee could be demanded. Subsequently when Professor Lowenthal and Mr. Knopf attempted to file a habeas corpus petition for their clients, Judge Carswell did not permit them to do so until they had wasted precious time attempting to obtain the signatures of the imprisoned civil rights workers, despite the fact that Rule 11 of the Federal Rules of Civil Procedure indicates that the attorney's signatures are sufficient.

Moreover, Judge Carswell would not accept the habeas corpus petition that Mr. Knopf had painstakingly drawn up until it was redone on special forms provided by the court, although the forms were not designed to cover habeas corpus petitions arising out of the refusal of a state court to honor the jurisdiction of the federal courts.

Despite the barriers that Judge Carswell placed before them, Professor Lowenthal and Mr. Knopf were finally able to file habeas corpus petitions and to demonstrate to Judge Carswell that he had no choice under the law but to grant the petitions. Judge Carswell, however, still managed to thwart their efforts to keep the civil rights workers out of jail. As stated by Professor Lowenthal, at the same time that Judge Carswell granted the habeas corpus petitions "[O]n his own motion, because the Gadsden County officials were not there to ask for it, and without notice to the defendants, the habeas corpus petitioners, and without a hearing or any opportunity to present testimony or argument, he remanded the cases right back to the Gadsden County courts.

I at that point moved before Judge Carswell directly for a stay of his remand so that I could have time to file a notice of appeal to the fifth circuit. He denied my request for a stay, pending filing notice of appeal."

Judge Carswell also refused to have the marshal serve the habeas corpus order on the Gadsden County sheriff despite the following provisions of 28 U.S.C. § 1446(f) that

"If the defendant or defendants are in ac-

tual custody on process issued by the state court, the District court shall issue its writ of habeas corpus, and the marshal shall thereupon take such defendant or defendants into his custody and deliver a copy of the writ to the clerk of such state court."

When Professor Lowenthal served the writ of habeas corpus himself the sheriff first released but then immediately rearrested the civil rights workers pursuant to the remand. It is not clear how he learned of his authority to do so. Professor Lowenthal testified as follows:

"The sheriff produced the jailed voting registration workers, and at once rearrested them because *Judge Carswell had had his marshal telephone the sheriff to advise the sheriff that Judge Carswell had on his own motion remanded the cases right back to the Gadsden County court.*

I was in Judge Carswell's chambers and office, and I do not remember whether I overhead the conversation between Judge Carswell and his marshal or whether somebody reported this to me. I do not know. What I do know is that when I got out to the sheriff with the habeas corpus order to release the men, the sheriff already knew of the remand, and therefore on the spot produced the defendants and rearrested them and put them back in jail."

The experiences of Ernest Rosenberger who preceded Professor Lowenthal as a representative of the American Civil Liberties Union in Northern Florida were indicative of Judge Carswell's willingness to go beyond the courtroom to deny litigants their basic rights.

Mr. Rosenberger represented nine clergymen freedom riders arrested in a Tallahassee airport restaurant in 1961. There had been numerous appeals in the case and as a result of a filing date having been missed the appeals were terminated. At the time Mr. Rosenberger entered the case the only recourse open to the clergymen was a writ of habeas corpus. Judge Carswell denied the writ and the case was immediately appealed to the Fifth Circuit which modified Judge Carswell's order so that it provided for an immediate hearing by Judge Carswell if the state court did not grant such a hearing. On the same day that the judges of the Fifth Circuit rewrote Judge Carswell's order, Mr. Rosenberger met with Judge Carswell and Mr. Rhoads, the City Attorney of Tallahassee. Judge Carswell told Mr. Rhoads "that this whole case could be ended by reducing the sentences of the clergymen to the time already served." As Mr. Rosenberger pointed out, Judge Carswell's advice "could have no other effect except to moot the entire question, to leave . . . [the clergymen] with no way for vindication, to insure them a permanent criminal record. This was a matter where the judge advised the City Attorney in a state court proceeding actually of how to circumvent an order which had been put in by the U.S. Circuit Court." The City Attorney and the state judge followed Judge Carswell's advice despite the objections of Mr. Rosenberger.

The impressions and experiences of Professor Clark, Professor Lowenthal, Mr. Knopf and Mr. Rosenberger paint a picture of blatant hostility and aggressive unfairness that casts serious doubt upon Judge Carswell's judicial temperament to sit even on a federal District Court much less on the Supreme Court of the United States. Judge Carswell did not take the stand to rebut these charges. His general statement that there has never been "any suggestion of any act or word of discourtesy or hostility on . . . [his] part," does not dispel the doubts created by their testimony. None of them have anything to gain by misleading the Committee or the Senate. In particular, it is worth remembering that Mr. Knopf is an employee of the Justice Department of the United States, who testified pursuant to a subpoena. As was forcefully pointed out during the hearings Mr. Knopf has other things to occupy his days now—"earning a paycheck."

JUDGE CARSWELL'S LACK OF PROFESSIONAL COMPETENCY

Despite the problems of temperament that Judge Carswell displayed on the lower courts, there might still be some basis for supporting his confirmation to the Supreme Court if he were a man of great intellectual and professional distinction. At least then there would be hope that once on the Supreme Court he would display a capacity for growth that would enable him to deal capably and objectively with the matters of vast importance that come before the Court.

He is, however, a mediocre man. He has demonstrated neither the depth of intellect nor of understanding that would indicate that he might fill with distinction the seat once held by Felix Frankfurter and Benjamin Cardozo. He is, instead, in the opinion of the Deans of two of our most respected law schools, a man who is professionally unqualified to sit on the Supreme Court. Dean Pollak of Yale testified that Judge Carswell "has not demonstrated the professional skills and the larger constitutional wisdom which fits a lawyer for elevation to our highest court.

I am impelled to conclude, with all deference, I am impelled to conclude that the nominee presents more slender credentials than any nominee for the Supreme Court put forth in this century."

Dean Bok of Harvard has written that Judge Carswell has "a level of competence well below the high standards that one would presumably consider appropriate and necessary for service on the court."

Twenty members of the University of Pennsylvania Law School examined his opinions in various areas of the law and concluded "that he is an undistinguished member of his profession, lacking claim to intellectual stature." Charles L. Black, Jr., Luce Professor of Jurisprudence at the Yale Law School and one of the most respected members of the academic legal community stated in a letter to the Chairman, "[T]here can hardly be any pretence that he [Carswell] possesses any outstanding talent at all. On the contrary, all the evidence I have seen would lead to the conclusion that mediocrity is an independent valid objection to his appointment."

Perhaps most telling was the testimony of Professor William Van Alstyne of the Duke University Law School, one of the most distinguished legal scholars in the South. Professor Van Alstyne had testified before the Senate Judiciary Committee in support of Judge Haynsworth, but testifying in opposition to Judge Carswell, Professor Van Alystyne concluded that Judge Carswell's decisions reflected "a lack of reasoning, care, or judicial sensitivity overall."

Despite his failure to follow the opinions of the higher courts in a number of areas of the law, Judge Carswell has been referred to by his supporters as a strict constructionist or a judicial conservative. Such terms, properly applicable to men with highly developed judicial philosophies such as Mr. Justice Felix Frankfurter and Mr. Justice John Harlan have no relevance to a man such as Judge Carswell who at best is mediocre and, and at worst, has allowed his biases to permeate his courtroom.

There are many great southern judges and lawyers to whom the adjective "strict constructionist" is properly applicable and whom I would willingly support if they were nominated for the Supreme Court—men such as Sam Ervin of North Carolina, Judge Walter E. Hoffman of Virginia, Judge William F. Miller of Tennessee and Stephen O'Connell of Florida, President of the University of Florida. These are men with whose philosophies I might differ, but whom I would support because they are fair men and men of legal distinction. As Dean Bok pointed out, "The problem [with Judge Carswell] is one that has much less to do with judicial philosophy than with judicial competence; for extremely competent judges can be found with widely varying attitudes concerning the judicial function, let alone political or social questions."

CONCLUSION

I must conclude that Judge Carswell has displayed neither a proper judicial temperament nor a professional competency equal to the task set for him. I oppose the confirmation.

COOPERATION BY THE NAVY IN MAKING A MOTION PICTURE

Mr. MURPHY. Mr. President, one of my constituents, Darryl Zanuck, president of Twentieth Century-Fox Films Corp. has directed my attention to a press release issued last week by a Member of the other body, concerning the cooperation and assistance given by the U.S. Navy in the filming of a soon-to-be-released motion picture, "Tora! Tora! Tora!"

The Congressman's press release was accompanied by his publicly released letter to the Attorney General of the United States requesting Mr. Mitchell to institute suit for sums allegedly due the Government for certain services and facilities furnished by the U.S. Navy to the film company. Additionally, the Member requested that the Attorney General seek an injunction against the exhibition of the film until the allegedly unpaid sums are collected.

It is a matter of some regret to me that I am once again compelled to discuss this situation here. But I believe it necessary to refute unfounded and bizarre charges that concern the entire concept of media relations with the military arms of our Government. Moreover, directly involved in this continuing harassment is a California motion picture producer, a major employer in my State, whose chief executive officer is not only my longtime personal friend but a gentleman of the highest repute and himself, as an officer in the U.S. Army Reserve, a man singularly devoted to the services.

The basis for this latest attack by the Member of the other body on the film company is a report prepared by the Comptroller General of the United States. It concerns generally the concept and the applicable rules and the regulations concerning repayment to the military for services rendered in the preparation of privately made films, or tapes, or for that matter, magazine or newspaper articles—in short anything that involves the use of a Government-owned item and the time of a Government-paid employee required to prepare something for the media. The report also deals more specifically with the amount and kind of aid rendered by the U.S. Navy in the preparation of the film "Tora! Tora!

Tora!" The GAO report was prepared at the request of "several Members of Congress" and submitted on February 17. It follows by 6 months a similar report by GAO that examined the same subject in connection with services rendered by the U.S. Army to John Wayne in filming "The Green Berets."

The GAO report, 67 pages long, begins by stating that its "examination was directed to determining the extent of the direct and indirect assistance provided by the Department of Defense and to developing information concerning the charges prepared and billed by the Department of Defense and the amounts collected and owed to the Government by the film's producer." It emphasizes that neither the Department of Defense nor the Twentieth Century-Fox Film Corp. was consulted and that no comments were solicited or obtained from either, but both have been sent copies of the report.

The report then proceeds to its initial finding. It says:

Department of Defense policy governing military support of commercial films does not clearly define the types of support for which the Government is to be reimbursed or the criteria for determining the amount of reimbursable costs and preparing appropriate charges.

It points out that a Bureau of the Budget regulation requires that costs to the Government be recovered "for services that are above and beyond those that accrue to the public at large." It continues that the Defense Department in its policy instructions has not provided sufficient criteria as an alternative to the Budget Bureau rule and that this has led to inconsistencies by military authorities in determining the amounts and degrees of cost reimbursement.

There seems to me to be nothing very sensational in this report. Nothing about any dereliction by the film producer in repayments; nothing more than a difference of opinion between two government agencies. A bit further on the GAO becomes mildly critical and says:

GAO believes that the Office of the Assistant Secretary of Defense for Public Affairs has not established adequate procedures for controlling and coordinating the assistance provided by military departments to ensure that military units are determining costs and preparing appropriate billings for this assistance.

Once again, one agency is chiding another for its method of big business.

But to carry out this advice raises a nice problem for Defense. Should it, for example, bill networks and magazines and newspapers for feeding and housing television crews and photographers and writers who are taken aboard carriers for a week or two during the recovery operation of a spacecraft? Of course, reporting the landing is of benefit to the public at large but the television network is a private enterprise and it receives large sums in revenue from the sponsor of that broadcast. What are the rules for the support afforded the television crews flown around Vietnam and frequently housed and fed at Government expense to produce the broadcasts that are paid for by private sponsors? The Government believes that the people, the public at large, is the ultimate beneficiary of the support given these private communications media. The military and NASA have made the only logical decision, whether or not they have established the criteria that GAO suggests should govern all such help.

"The film's producer was provided extensive military assistance," says the Report now turning specifically to help given Twentieth Century-Fox in making Tora! Tora! Tora! It continues: "In a previous examination (it is now referring to its earlier report of last June dealing with The Green Berets), GAO concluded that the practice of Federal agencies rendering this type of assistance is not in violation of the law. The cost to the Government for the assistance rendered by (Defense) and billed to the company amounted to approximately $319,000. Of this amount, the Government has been reimbursed approximately $317,000.

Thus far, GAO has come up with a $2,000 difference which neither the Navy nor the film company can yet identify. The congressional committee report to which I have alluded computed total disbursements by Fox of approximately $791,000 at that time. As a matter of fact, the company's own latest figures show that it has thus far paid the Navy $983,500 for its services, for the salaries of personnel who volunteered to work on the film, and for other incidentals.

We come now to the basis for the press release by the Member of the other body. "However," says the GAO report, "the film's producer received additional support costing approximately $196,000 for which it was not billed. The major portion of this support involved the operation of an aircraft carrier for 2½ days off the coast of southern California for filming planes taking off from the carrier."

Note that the GAO makes clear that the film company was not billed for this sum. Nor has it yet been billed. And yet my colleague of the other body seems to suggest that the film company has willfully hornswoggled the Government. To make certain that the Government will get money it has not asked for he wants the Attorney General to dash into court and get an injunction against exhibition of the picture. In short, the Member of the other body is asking that a film company that has already paid the Government $800,000, that has paid every bill rendered, should be sued for money for which it has not even been billed.

Why did the Navy not consider this particular item as reimbursable? Why did it not bill for the services of the carrier? It is no secret and there are records to prove that not only was the Navy anxious to have the "Tora! Tora! Tora!" film made but it was doubly anxious that the film emphasize and dramatize the role that the carriers played in winning the war against Japan. The film producers were advised that the carrier in question, which was then being readied for a spacecraft recovery some weeks later, would be conducting what are known as "independent ship exercises" off the California coast and that the aircraft launching filming could be done without an interference to the exercises and without any special problem or cost for the Navy, and therefore for the film producer.

Now it has become a different story. Now the Comptroller General is making a study, now a Congressman is making charges. So now, the carrier captain agrees that the "independent exercises" could as well have been conducted in port, because, he says, they basically involved personnel below deck.

However, whether the additional charge for the use of the carrier for 2½ days is appropriate or not is not my responsibility and is not the point I make here. What I want to emphasize is that a responsible American company and its officials are being publicly maligned by a Member of Congress without what would seem to me any basis in fact, without any dereliction of any kind or character.

It is obvious, I believe, from the facts I have recited that the questions raised by the Member of the other body should in fairness be asked of the Department of Defense, and more specifically the Navy Department.

It is really an attack on a program and policy followed by the military arms of this government for more than 40 years; a policy of cooperating with film producers and indeed with all the media of communications.

A report prepared for the Military Operations Subcommittee of the Government Operations Committee of the House of Representatives in December of last year clearly illuminates this policy. The congressional report says:

Department of Defense assistance to motion picture companies as well as other media is of long standing. . . . Between 1951 and 1968, a period covering four administrations, the Navy assisted at least 26 film productions, in addition to a number of filmed TV series. The other military services also have assisted scores of motion pictures. DOD policy governing such assistance first was formalized during the Eisenhower administration . . . and revised or amplified from time to time.

The Military Operations Subcommittee Staff Report from which I have just quoted, was filed last December. It deals comprehensively and factually with the program and policy of Department of Defense in assisting private film makers and other media. Like the GAO report, it resulted from questions raised by two other Members of the House.

Quite properly, these two Members wanted to know the authority for the military aiding the media, the policy generally followed, and the method of computing costs and reimbursables. In January of 1969 one Member asked General Accounting to give him the facts about John Wayne's "The Green Berets." A few months later the second Member asked the House Government Operations Committee to make a report on Defense Department support for Darryl Zanuck's "Tora! Tora! Tora!"

The first report on "The Green Berets" was delivered last June. The Congress-

man turned it over to the Government Operations Committee with a request for further study and for hearings. So questions about two film productions were now officially before the Military Operations Subcommittee.

Meanwhile, the third Member of the other body, took a different tack. He issued the first of a series of press releases, declaring that the film of the Pearl Harbor attack made the Japanese look good and the United States bad; that American sailors had been injured in making the film; decrying that an American carrier was used to depict a Japanese carrier—need I interject that Japanese carriers no longer exist—criticizing that American sailors were used to portray Japanese sailors. He announced that this was a matter for the Armed Services Committee and that he would introduce a bill that would prohibit the use of military equipment or forces to make pictures for private profit. He also announced that there would be hearings although he is neither the chairman nor a member of the committee. During the 8 months that have intervened without hearings, the flow of press releases from his office continued.

I have had some considerable amount of experience as an actor and a producer and motion picture executive and perhaps know a great deal about picture making, but one need not be an actor to know that any film involving the military is carefully checked by the branch of the service long before it is begun. In the case of "Tora! Tora! Tora!" some 7 months of advance preparation was devoted simply to discussing with the Navy the story, the scenario for the film, the events to be pictured, the accuracy of each event. Every item of plot and story line was carefully gone over with Navy personnel. Can you imagine that Navy officers would approve a script that would make them and our Government look bad?

While the press releases continue to flow, the Military Operations Subcommittee went ahead with the study requested by the two Congressmen. They had turned over to the committee staff the first GAO report and extensive correspondence with various Defense Department officials. The committee staff concluded its study of what the GAO had found, of the extent of the help granted in making both "The Green Berets" and "Tora! Tora! Tora!" and filed its report last December, just 2 months ago. It sent copies of its report to the two Members who had initially requested the study and because the report dealt in depth with the "Tora! Tora! Tora!" film it also sent a copy to the Member who had been issuing critical press releases.

There have been no press releases for 2 months and no comments. The reason is fairly obvious. This report by the staff of the House Military Operations Subcommittee is a realistic factual summary that makes clear; First, that there has been no violation of law; Second, that Twentieth Century-Fox has paid every bill submitted to it; Third, that there is a difference of interpretation of rules between the Budget Bureau and the Defense Department; Fourth, that the policy followed in making "Tora!" is the policy followed for 40 years; Fifth, and that the Government benefits as much from this policy as does the filmmaker.

Its 31 printed pages are a comprehensive analysis of the step-by-step filming of "Tora! Tora! Tora!" from its inception and first discussion with the Navy Department to its completion. It reviews the statutes and the policies that have governed cooperation between the military arms and the media; it noted the publicity about the pictures by the Congressmen; it surveyed each item of cost incurred by the Navy in its cooperation with the film company; it analyzed how the charges were computed, how and why they were billed or not billed, if not billed the reason given by the Navy for not billing; it discussed the Comptroller General's viewpoint about accounting practices; it pointed to the applicable Bureau of the Budget regulations; it noted that the General Accounting Office was concurrently carrying out a study requested by the Member; that a difference of opinion about accounting practices between the Defense Department and the GAO was probably inevitable; and finally it drew some conclusions of its own.

I am going to quote from that congressional report. It separates fact from fiction; it deals with realities; not political histrionics.

The congressional report made 21 separate findings. Finding No. 1 states:

Statutory authority for Government assistance in the making of motion pictures by outside groups is not explicit but inferred from laws giving broad administrative power to the Secretary of Defense and military department heads (10 U.S.C. 133(b), 3012, 5031, 8012) and from a general statute prescribing policies for charges to users of Government services who receive special benefits (65 Stat. 290, 31 U.S.C. 483(a) (Supp. III)). The Comptroller General believes that such assistance is not in violation of law.

Finding No. 3 is as follows:

Within the Department of Defense there was general agreement (with a subsequent exception on the carrier issue) that assistance to the film maker on the "Tora! Tora! Tora!" project was fully justified by the nature, purpose, and content of the film script. Extensive effort was made in Government quarters to check and correct the script and to supply information or other services which contributed to historical authenticity and factual accuracy.

Here is what finding No. 4 declares:

Twentieth Century-Fox was or will be billed aupproximately $300,000 for Government material and services used during the filming of "Tora! Tora! Tora!", and the company paid an additional $489,000 to military units or individuals who voluntarily participated as pilots, extras, or support personnel. The latter figure includes $7,000 in donations to ship welfare and recreation funds where ships were briefly delayed for filming purposes.

In short, the film company has paid the Government almost $800,000 for direct services and to its personnel in the making of the film.

Congressional committee finding No. 5 is of importance because it makes clear that the problem of billings for services is not a simple, easily calculable one, and that what has been billed has been paid. It says:

Judgment as to the adequacy of the billings depends partly on the cost concept applied, partly on the diligence of local activities in identifying reimbursable costs. In terms of extra or out-of-pocket expenses (which seem to be contemplated by the applicable directive), a large variety of services was, or will be, reimbursed, though the GAO will report that some reimbursable-type items were not billed, and in other cases billings were belated.

I will skip finding No. 6 in the interest of brevity. It emphasizes that in the Defense Department there is no central coordination, supervision and reporting of the kinds and amounts of items billed. It makes clear that if there are discrepancies of missed billings, these are internal accounting problems. Certainly the film company cannot be charged with evasion or nonpayment if the problem is an intergovernmental one in which the General Accounting Office thinks that the billings procedure ought to be one way and Defense believes it should be another. The Member of the other House chooses to ignore this fact and attacks the film company as the culprit. Finding No. 7 states that "Department of Defense instructions on governmental assistance to motion picture companies are not explicit, precise, or consistent on the matter of cost reimbursement."

It will be recalled that the General Accounting report suggested that a charge should have been made for the 2½-day use of the carrier. Here is what the congressional report says in finding No. 8 on this point:

If a cost concept alternative to that of recovering out-of-pocket expenses were applied, which would allocate a portion of estimated total operating costs to a given segment of assistance; for example, the hourly or daily cost of ships used in filming scenes, then the cost to the company would have been substantially, and possibly prohibitively, higher. The Department of Defense instruction regarding assistance to film makers does not specify such a concept of allocated cost.

The next finding continues:

Cost reimbursement in this particular field is complicated not only by lack of fully consistent instructions or prescribed criteria or standards, but by the consideration that the Government as well as the company benefits from the making of the film. Government assistance in the first instance is conditioned upon benefit to the national interest and the Department of Defense.

That, I submit, is the key to the entire policy; benefit to the national interest and to the Department of Defense. The Navy obviously felt that it is important for young people living a quarter of a century after the event to see and feel Pearl Harbor and get some idea of the long, difficult and successful road back. I happen to agree completely.

Suppose, for example, the Navy couldn't cooperate in making the film. Suppose a cost basis was established that made the project uneconomic. What would the film company do? It could go abroad and make the film. It would be welcomed with open arms in a dozen countries. For a decade we in California have been dealing with the problem of American film production abroad. In all other countries where all film production is completely

subsidized, foreign governments are eager for American film production. They hold out substantial economic benefits. They make soldiers and guns and ships and castles and whatever else is needed available at small cost. American unions and guilds whose membership embrace every element of personnel in movie making have been struggling with this problem for years. California congressmen and senators have sought and continue to seek ways and means to encourage domestic production. And now we come up against a situation where a Member of Congress, who is seemingly unaware of our problems, would encourage a policy that will send American production abroad and bring about greater unemployment in Hollywood.

I continue to quote from the findings of the House Military Operations Subcommittee. No. 13 says:

The record is clear that the Navy, including the theater and fleet commands, strongly favored from an early date accommodation to the film company's request for use of a carrier . . . The military pilots who flew the aircraft, and the enlisted men who performed as extras, did so voluntarily, on leave status, and were compensated for their participation. Granting of concerted leave was an accommodation to the film project which the Navy viewed as permissible within the context of officially-approved cooperation and within the laws and regulations relating to off-duty employment of military personnel. . . . Twentieth Century-Fox appeared responsive in complying with official requests or otherwise taking steps to protect Government personnel and equipment in the conduct of filming operations . . . in the case of the six enlisted men who required hospitalization for burns, the company bore their medical and hospital expenses.

I interject here that the Member of the other body in one of his press releases claimed that the men were injured while on duty, that they were not recompensed, and that the Government paid medical and hospital expenses. Since the facts were pointed out revealing he had been in error on each point, he has not repeated the erroneous charges.

Mr. President, what is at stake here is the entire policy of cooperation between the Government and all the media, not only film makers. The important point is not whether the film company was properly billed for services, or whether the additional suggested billing is equitable, or whether the Defense Department or the General Accounting Office is correct. What I am concerned about is that a policy and program followed for 40 years with general benefit to our Government is being put in jeopardy.

As the Military Operations Subcommittee report observes:

From the Government's point of view, assistance to film makers can have positive values. If it is decided that the film will help recruiting, or portray favorably some aspect of military life or operations, or recapture an important martial event in the nation's history, the Department of Defense is prepared to assist . . . If the assistance seems excessive, or not sufficiently reimbursed or unseemly in the context of wartime requirements, it invites allegations of military use of resources for propaganda purposes, *particularly if the critic is opposed to dramatization of military life.*

The emphasis on that last phrase, Mr. President, is my own.

The congressional report said:

Our review of the "Tora" files in the Government shows that extensive efforts were made to assure the greatest possible accuracy in script and portrayal of events. There are pages of comments and criticisms on almost every scene in the script from various historical offices within the Government, and these comments cover not only key events but such minute details as the rank of a minor officer in a given scene at the time of the Pearl Harbor attack. The comments of Government experts were carefully taken into account by Twentieth Century-Fox in revising the script. Indeed, acceptability of the script is a condition of Government assistance, not only for the sake of accuracy and authenticity but to make sure that certain values of dignity and property are observed.

I cannot close these remarks without a personal comment about Darryl Zanuck, the chief executive officer of Fox, who feels his own integrity is being impugned. In the course of a personal letter he pointed out that at the age of 15 he ran away from his home in Wahoo, Nebr., to enlist for World War I. After serving 9 months with the 34th Division in New Mexico he went overseas and served there until the end of the war. Just before our country got into World War II, at a time when Mr. Zanuck was a $5,000-a-week studio executive for Fox, he broached the idea to Chief of Staff Gen. George Marshall of preparing training films to speed training of our troops. General Marshall approved, had Zanuck commissioned to be in charge of the project, and Zanuck took a leave of absence from Fox without pay. He served throughout the war, in England, the Aleutian Islands, and North Africa; with Lord Mountbatten in command of cross-channel raids and with Gen. Mark Clark in Africa and Italy. He was awarded the Legion of Merit with an unusual citation.

To me, and to all who know Darryl Zanuck, it is inconceivable that a man with this war record, who first enlisted at 15 and who quit a $5,000-a-week job when he was well beyond military age to again serve his country, would be associated with a film that denigrates his country of its military services.

I believe it is important that the record of this matter be kept straight both for the sake of Mr. Zanuck personally and of broader significance, for the sake of continuing the mutually beneficial cooperation between our armed services and the media.

RAILROAD ACCIDENTS CONTINUE TO INCREASE AT AN ALARMING RATE

Mr. HARTKE. Mr. President, I invite the Senate's attention to a recent report by the Federal Railroad Administration indicating that in 1969, for the 12th consecutive year, the number of train accidents continued upward. There were 500 more accidents in 1969 than in 1968. That is an increase of 6 percent over the past year and an increase of 60 percent over the last 5-year period. The deaths and injuries continue to be at a very high level.

The bill passed by the Senate in December 1969 would curtail to a large extent this continuing trend in railroad accidents. The Senate in passing the bill in December in effect determined that the soaring accident rate on the Nation's railroads, coupled with the great potential for disaster when an accident occurs, requires early and effective governmental attention. The Senate has also made the judgment that the Federal Government, in its effort to provide for greater safety on the Nation's railroads, should enlist the assistance of those States which have the capability and which are willing to join in the effort. The Senate, by its action, also recognized that the railroad industry is the only mode of transportation in the United States which presently is not subject to comprehensive Federal safety regulations.

The great danger in this alarming acceleration of railroad accidents is not merely in the number of deaths or the property damage and injuries which have occurred in the past. These statistics alone do not provide an accurate picture for disaster attending the operation of the Nation's railroads. Railroads today, as well as other carriers, are transporting extremely flammable explosives, highly reactive and poisonous substances throughout the Nation's metropolitan areas and countrysides. It has been reported to the Commerce Committee that there are 25 new dangerous commodities considered for marketing purposes every day. Often, as the committee learned so well during its hearings, the hazardous materials carried are so exotic and represent such an unknown factor that control of fire and contamination resulting from an accident is too often beyond the capability of local authorities. Special firefighting equipment and procedures may be necessary for each of several kinds of materials that are being transported on a single train.

Biological and chemical warfare materials including deadly nerve gases have been shipped in the past and may be shipped in the future by the Defense Department on the Nation's railroads. Increased accidents, greater speeds, and more hazardous shipments provide an extremely lethal combination so that with increased frequency, train wrecks threaten whole communities with flame explosions, and contamination by poisonous chemicals. The Senate-passed bill makes provision to meet this problem.

Testimony before the Surface Transportation Subcommittee indicated that railroads are making an effort to eliminate unsafe conditions. Indeed, some railroads have enjoyed very good safety records. Progress has been made but there have been changes in freight car and locomotive sizes and weights, changes in speed, problems such as axle and journal failures, broken wheels, undue strain on couplers and draft gears due to bigger cars and larger train consists, inability of longer freight cars to negotiate sharp curves, crossovers, and turnouts, buckling of jumbo tank cars without center sills when the car is subjected to compressive drawbar force, and the harmonic rocking of freight cars

with high centers of gravity. Human failures are also a factor. All these elements pose problems which may require much greater research than has thus far been brought to bear.

Until the Senate action was taken on S. 1933 little attention had been paid to the need for greater railroad safety at either the State or Federal levels. The rail safety statutes now in effect apply only to very specific safety hazards and leave the greatest cause of accidents beyond the control of the Federal Government.

It is essential that Congress complete action on this very vital legislation before the end of this Congress.

Mr. President, I ask unanimous consent that the Federal Railroad Administration rail safety report for 1969 be printed in the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF TRANSPORTATION NEWS

Train accidents continued upward for the 12th consecutive year in 1969, topping the high mark set the previous year by 500 accidents, according to a preliminary year-end report made public today by the Federal Railroad Administration.

The 8,529 train accidents reported in 1969 represented a 6 percent increase over 1968 and a 60 percent rise over the last five-year period, the FRA said. Of the total, 493 accidents resulted in casualties—up 13 percent from the previous year.

Five passengers were killed and 294 injured in train accidents during 1969. This compares with 683 injuries and 2 passenger deaths in 1968. Employee casualties totaled 179 killed and 16,709 injured—up from the 146 deaths in 1968 but down from the 17,600 injuries.

Rail-highway grade crossing accidents resulted in 1,505 deaths and 3,712 injuries. While both categories were below 1968 levels, the totals continued above the 1,500 and 3,700 marks for the sixth straight year.

Accidents involving trespassers resulted in 610 fatalities and 655 injuries in 1969, down slightly from 628 fatalities and 663 injuries in 1968.

The 12-month preliminary report is attached.

DEPARTMENT OF TRANSPORTATION, FEDERAL RAILROAD ADMINISTRATION

PRELIMINARY REPORT OF RAILROAD ACCIDENTS AND RESULTING CASUALTIES, DECEMBER 1969

[This statement, issued monthly, furnishes preliminary accident report data as reported by all railroads in the United States without detailed examination or final corrections. FRA 6180-2, formerly FRA Form M 400, "Summary of Accidents Reported by All Line-haul and Switching and Terminal Railroad Companies," released at a later date on a monthly, quarterly, and annual basis furnishes these data on a corrected basis and in greater detail]

Item	Month of December		12 months ended December	
	1969	1968	1969	1968
Number of train accidents [1]	783	800	8,529	8,028
Number of accidents resulting in casualties	33	33	493	435
Number of casualties in train, train-service, and nontrain accidents: [1]				
(a) Trespassers:				
Killed	40	46	610	628
Injured	43	43	655	663
(b) Passengers on trains:				
In train accidents: [1]				
Killed			5	2
Injured			294	683
In train-service accidents: [1]				
Killed			1	9
Injured	49	53	574	646
(c) Employees on duty:				
Killed	8	10	179	146
Injured	1,325	1,602	16,709	17,600
(d) All other nontrespassers:				
Killed	166	183	1,500	1,574
Injured	551	494	5,070	5,016
(e) Total, all classes of persons:				
Killed	214	239	2,295	2,359
Injured	1,968	2,192	23,302	24,608
Total highway grade-crossing casualties for all classes of persons:				
Killed	171	177	1,505	1,547
Injured	421	379	3,712	3,807

[1] Train accidents are those arising from the operation or movement of trains, locomotives, or cars which result in more than $750 damage to equipment, track, or roadbed with or without a reportable death or injury; train-service accidents are those arising from the operation or movement of trains, locomotives, or cars which result in a reportable death or injury but not more than $750 damage to equipment, track, or roadbed; nontrain accidents are those which do not result from the operation or movement of trains, locomotives, or cars.

LAOS

Mr. MATHIAS. Mr. President, on Wednesday I warned in a floor speech, that American intervention in Laos violates the spirit of two congressional foreign policy directives and has created an arena for the repetition of the mistakes of our Vietnamese involvement. Several of my colleagues supported this position. They expressed their concern that Laos could become another Vietnam and American forces should not be committed there without congressional approval.

I commend to my colleagues an excellent editorial in today's New York Times which is germane to Wednesday's discussion and ask unanimous consent that it be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

DILEMMA IN SOUTHEAST ASIA

Defense Secretary Laird's promise that President Nixon will not send combat troops to Laos without the consent of Congress is hardly reassuring, in the light of the secrecy that continues to surround already serious United States involvement there and the apparent ineffectiveness of American-support efforts to stem a new Communist drive.

Having failed to be candid about its current and past activities, the Administration cannot expect the public to have confidence that it is being treated with candor on the disquieting question of future prospects.

Hanoi has caught the Nixon Administration in a policy dilemma in Southeast Asia. While the policy of Vietnamization invites prudent restraint on the part of the North Vietnamese and their allies in South Vietnam, the new Nixon Doctrine of "no more Vietnams" invites alternative Communist counterthrusts in neighboring Laos.

A satisfactory solution certainly cannot be found by reverting to the discredited past policies of continuing to Americanize the war in Laos. The answer lies in moving more rapidly to apply the Nixon Doctrine of restraint in Vietnam itself.

Only by seeking a speedy settlement in Vietnam, consistent with this country's limited interests in the whole area, can the United States hope to extricate itself from the contiguous quagmire in Laos. War and peace in Southeast Asia are indivisible. The Nixon Doctrine cannot be applied piecemeal.

INTEGRATION IN THE SCHOOLS

Mr. KENNEDY. Mr. President, I was thoroughly impressed with William Raspberry's treatment of the integration crisis in our public schools. Mr. Raspberry is one who has for a long time been quite close to the issue of school integration in the schools of our Nation's Capital. His recent column in the Washington Post presents a well-reasoned view of our current stance in this critical national issue.

For that reason, I request unanimous consent to enter in the RECORD William Raspberry's column of February 20, 1970, as it appeared in the Washington Post.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

CONCENTRATION ON INTEGRATION IS DOING LITTLE FOR EDUCATION

(By William Raspberry)

Racial segregation in public schools is both foolish and wrong, which has led a lot of us to suppose that school integration must, therefore, be wise and just.

It ain't necessarily so. It may be that one reason why the schools, particularly in Washington, are doing such a poor job of educating black children is that we have spent too much effort on integrating the schools and too little on improving them.

The preoccupation with racial integration follows in part from a misreading of what the suit that led to the 1954 desegregation decision was all about.

The suit was based (tacitly, at least) on what might be called the hostage theory. It was clear that black students were suffering under the dual school systems that were the rule in the South. It was also clear that only the "separate" part of the separate-but-equal doctrine was being enforced.

Civil rights leaders finally became convinced that the only way to ensure that their children would have equal education with white children was to make sure that they received the same education, in the same classrooms.

Nor would the education be merely equal, the theory went: It would be good. White people, who after all run things, are going to

see to it that their children get a proper education. If ours are in the same classrooms, they'll get a proper education by osmosis.

That, at bottom, was the reasoning behind the suit, no matter that the legal arguments were largely sociological, among them, that segregated education is inherently unequal.

(Why it should be inherently more unequal for blacks than for whites wasn't made clear.)

In any case, the aim of the suit was not so much integrated education but better education. Integration was simply a means to an end.

Much of the confusion today stems from the fact that the means has now become an end in itself. Suits are being brought for integration, boundaries are being redrawn, busing is being instituted—not to improve education but to integrate classrooms.

The results can sometimes be pathetic.

In Washington, blacks send their children (or have them sent) across Rock Creek Park in pursuit of the dream of good education. But as the blacks come, the whites leave, and increasingly we find ourselves busing children from all-black neighborhoods all the way across town to schools that are rapidly becoming all-black.

The Tri-School setup in Southwest Washington is a case in point. Of the three elementary schools in the area, only one was considered a good school: Amidon, where the children of the black and white well-to-do attended. Bowen and Syphax, populated almost exclusively by poor kids from the projects, were rated lousy schools.

Then the hostage theory was applied. A plan was worked out whereby all first- and second-graders in the area would attend one school, all third- and fourth-graders a second, and all fifth- and sixth-graders the third.

The well-to-do parents would see to it that their children got a good education. All the poor parents had to do was see to it that their children were in the same classrooms.

That was the theory. What happened, of course, is that instead of sprinkling their children around three schools, the luxury high-rise dwellers, black and white, packed their youngsters off to private school. Now instead of one good and two bad schools, Southwest Washington has three bad ones.

After 16 years, we should have learned that the hostage theory doesn't work. This is not to suggest that integration is bad but that it must become a secondary consideration.

Busing makes some sense (as a temporary measure) when its purpose is to transport children from neighborhoods with overcrowded classrooms to schools where there is space to spare.

It works to a limited degree when it involves children whose parents want them bused across town for specific reasons.

But it has accomplished nothing useful when it has meant transporting larger numbers of reluctant youngsters to schools they'd rather not attend.

The notion will win me the embarrassing support of segregationist bigots, but isn't it about time we started concentrating on educating children where they are?

GOLDEN ANNIVERSARY OF THE NATIONAL FEED INGREDIENTS ASSOCIATION

Mr. MILLER. Mr. President, I ask unanimous consent to have printed in the RECORD the proclamation of the Governor of the State of Iowa concerning the golden anniversary of the National Feed Ingredients Association.

There being no objection, the proclamation was ordered to be printed in the RECORD, as follows:

PROCLAMATION OF NATIONAL FEED INGREDIENTS ASSOCIATION

Whereas, the People of Iowa should be informed that a national agri-industry trade association is celebrating its 50th Anniversary during 1970; and

Whereas, this trade association is the Nation's second largest, and that it had its origin in Iowa in the year 1920; and

Whereas, Iowans have had considerable influence in guiding the destiny of this association, such as the current President, Al E. Zupek of Burlington; the President-Elect, John W. Megown of Marion; the immediate Past-President, Wayne Fox of Des Moines; the Executive Vice-President, Marvin Vinsand of Des Moines; and many othe Iowans have served in key capacities; and

Whereas, all Iowans should recognize the leadership that the National Feed Ingredients Association, Des Moines, has given in the area of sponsoring broad-scope livestock nutrition research and in the area of developing a better image for American Agriculture; and

Whereas, these efforts have helped to allow Iowa's and America's farmers to produce the best food in the world—both from an economical and from a nutritional standpoint, and these efforts have also let consumers better understand the farmers of Iowa and of America.

Now, therefore, I, Robert D. Ray, Governor of the State of Iowa, do hereby proclaim the year 1970 as the Golden Anniversary of the National Feed Ingredients Association in Iowa.

In testimony whereof, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 15th day of January in the year of our Lord one thousand nine hundred seventy.

ROBERT D. RAY,
Governor.

Attest:

MELVIN D. SYNHORST,
Secretary of State.

THE POST EXCHANGES

Mr. RIBICOFF. Mr. President, Walter Rugaber of the New York Times has written a most informative article about the system of post exchanges that serves our military and other persons associated with the military in the United States and in certain areas throughout the world. Important questions are raised in Mr. Rugaber's article and other Senators may find it of interest.

I ask unanimous consent that this vehicle from the New York Times of February 27, 1970, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

PX SYSTEMS ONE OF WORLD'S MOST POWERFUL AND LEAST VISIBLE RETAILING ENTERPRISES

(By Walter Rugaber)

WASHINGTON, February 26.—A Government agency operating with an aggressive and largely unfettered management has built an obscure string of stores into one of the largest, most powerful and least visible retail enterprises in the world.

It enjoys a substantial Federal subsidy, an exclusive license to trade on American military installations throughout the world, and a firm hold on nearly 5 per cent of the nation's consumers.

But it labors under few of the controls imposed on most Government units. There are no anxious sessions with the Budget Bureau, no annual appearances before Congress and no sudden visits from auditors in the General Accounting Office.

There is from time to time a vague uneasiness about this curious institution, known broadly as the military exchange system and informally as "the PX," or post exchange.

SEVEN ARE INDICTED

Yesterday, a Federal grand jury in New York indicted seven former and present employes of an exchange unit in Europe on charges that they had accepted kickbacks in return for placing large PX orders with an American sales representative.

There is no doubt that others among the more than 115,000 people who work for the exchange system not only have taken bribes but also have stolen money directly from cash registers and have pilfered merchandise from stores and warehouses.

Thefts and the like, along with innocent bookkeeping errors and shoplifting by patrons, cost the Army and Air Force exchange organization $22.3-million in one year. This amount included a $12-million shortage in Vietnam.

The $22.3-million is just over 1 per cent of sales, which compares favorably with the experience of many civilian outlets. Losses in many American stores have been increasing lately, and shortages of 3 per cent and more are said to be common.

LUXURIES IN VIETNAM

Many of the exchange system's difficulties have been traced to Vietnam, where the PX offered Americans an array of home-front luxuries unheard of in any other war and has created tremendous business opportunities.

Specific abuses help attract attention. The Federal grand jury in New York is likely to continue its bribery investigation, and the staffs of at least two Congressional committees have been making inquiries about the exchanges.

The General Accounting Office has tried more than once to inspect PX records and has been turned down each time. But it recently has made still another approach, and there is some prospect of an audit.

There are questions much broader and more intricate than kickbacks and black markets, however. About general operating policies, relatively little is known, and there is uneasiness about that fact alone.

"Off the record," remarked a source with broad knowledge of the exchanges, "I think it's bad, just as a matter of public policy, to have an operation that big without anybody keeping up with what's going on inside."

CIVILIAN RETAILER'S VIEW

Small civilian retailers are convinced that the exchanges are dangerous and unfair competitors that ought to be abolished entirely or at least reduced to the sale of a few very basic necessities.

Big business, for its part, sees the military market not only as an important outlet for its products but also as a valuable promoter of sustained brand loyalties among a predominantly young and susceptible customer population.

Individual Senators and Representatives receive endless appeals from both forces and intervene for this side or that, always with discretion and generally with effect. Congressmen fire off dozens of letters to the exchanges each week.

The managers wield great power under pressure, the pressure applied by others and the pressure of their own aims. The process often makes them nervous and defensive, and serves to heighten the suspicions held by others.

COVER-UP ALLEGED

"I feel more strongly than ever that there is a cover-up," a frustrated businessman said after losing a major contract under what he considered questionable circumstances,

"because the reply is weak and evasive." He was referring to the exchange system's reply to his complaints.

Exchange officials decide which products to buy and place on the shelves—and which ones to ignore. Favored items can become "musts," which require every store in the world to keep them in stock at all times.

Pleasing the men on active duty, and their families, is important to the Pentagon. The exchanges are a major fringe benefit, so considered in pay arrangements, and they influence re-enlistment rates.

The consumers are indifferent to the established wishes of Congressmen and other outsiders who want a limited PX. The people who shop in them want a bigger and bigger exchange, and in that they have been well accommodated.

The business may seem inconsequential enough to all those who think of a PX as the homely, out-of-the-way place where servicement buy cigarettes and chocolate bars and nylon stockings at cut-rate prices.

A VENTURESOME ORGANIZATION

The reality, however, is a venturesome merchandising organization that sells mutual funds, baby furniture, diamonds, automobiles and tape recorders; invests in sophisticated computers, and buys in huge volume to drive down prices.

More than $3.1-billion in annual sales rank the military exchange system above Montgomery Ward, F. W. Woolworth, S. S. Kresge, W. T. Grant, and every other chain in the United States except Sears, Roebuck and J. C. Penney.

While exchanges do business on a global basis and sell, according to one estimate, at an average of 35 per cent below list price, the profits rarely fall under 5.5 per cent of sales, and thus exceed those of any major competitor.

These gains are divided between the individual services' welfare and recreation funds and exchange reserves. The some $110-million donated to the funds is about equal to direct subsidies for items such as overseas shipping of merchandise.

The most profitable civilian retailer, Sears, Roebuck, reported a net income of 5.1 per cent on sales. The exchanges have the advantage of a Federal tax exemption.

Their gains are divided between individual services, welfare and recreation funds and the exchanges' reserves. The some $110-million donated to the funds is about equal to direct subsidies for items such as overseas shipping of merchandise.

FUEL FOR THE BOOM

The PX boom is fueled only in part by the higher troop levels brought about by the war in Vietnam. At least as important to its rise is the response by its consumers to the explosion of brands, advertising and display.

More and more of the outlets on military bases are simply modern department stores. More than 20,000 items often are laid out in an attractive, neon-lit, tiled and carpeted expanse that covers a half-acre or more.

"What a far cry from the old days of 20 or more years ago when I was on active duty," said a retired serviceman who had just strolled through one of the exchange system's elaborate emporiums.

Whatever the troop levels, the individual patron is buying more in the PX. Per capita sales in Army and Air Force exchanges have climbed dramatically from $536 in 1960 to $834 in 1969.

Outsiders interested in this increasingly successful system find even its most fundamental aspects, such as organization, a forbidding tangle of imbalance, contradiction, interrelation and exception.

The Army, Navy, Air Force, Marines and Coast Guard all have exchanges ultimately and theoretically responsible to the services and—much more ultimately and theoretically—to an Assistant Secretary of Defense.

The exchanges are an instrument of the Government only because of some indirect statutory reference and court decisions. There is no formal legislative authority; their only real charter is a collection of military regulations.

Relatively little of the money is appropriated by Congress, and it probably would be impossible to identify in the Federal budget. Most funds are generated by servicemen's purchases and therefore are considered beyond regular scrutiny.

Two of the military departments have formed the Army and Air Force Exchange Service, which dominate the service exchange field by making more than 70 per cent of the sales and establishing much greater centralization and control.

More than 98 per cent of the Army and Air Force Exchange Service's 80,000 employes are neither military men nor civil servants but workers with their own pay scales, insurance programs and retirement benefits.

THIN MILITARY LAYER

Many of these men and women have been running things for years. Above them is a thin layer of military officers, a single chief executive, a board of directors composed largely of widely separated generals, and two or three men in the Pentagon.

The military executives are regularly rotated. All the directors have other jobs and their strictly private meetings are said by several sources to mask a somewhat limited knowledge of exchange operations.

The Pentagon frequently is not consulted on policy, a recently obtained civilian study reports, and the tiny staff there is described as mainly "a problem solver rather than a problem preventer."

The most recent public hearings before a Congressional committee were held 13 years ago. The panel was concerned exclusively with one of the periodic battles over the items to be sold in domestic exchanges.

A FOUR-PAGE LIST

The House Armed Services Committee first drew up a list of "authorized" merchandise and maximum prices in 1948, and it has amended this document in private negotiations and public sessions several times since.

The accepted products march with precision and solemnity down four single spaced pages. There are, for example, "bags, shoulder," "bags, garment and laundry," and "bags, sleeping, including mattress."

The Congressmen added electric blankets, coffeemakers and portable typewriters in 1957. They raised the cost limits on girdles and garter belts from $4.50 to $10 in 1965, and they approved sport coats and surfboards in 1967.

Certain goods are conspicuously missing. The committee always had made it a point to check exchange suggestions with lobbyists for the relevant retail association, and some never survive the process.

A serviceman may buy gasoline, oil, batteries, and auto accessories such as seat covers and luggage racks, but not tires. He may purchase radios, tape recorders and record players, but not television sets.

The exchange system defends its independence with much persistence and determination. Many of its judgments, like judgments generally, are subjective and could be difficult to explain.

"Flexibility" is an article of faith with Brig. Gen. George C. McCord, the 52-year-old Air Force officer currently running the Army and Air Force Exchange Service from its new, six-story, well-appointed headquarters in Dallas.

"We operate essentially as a commercial corporation does," he said. "We're quite different from the Department of Interior. Does anybody from outside look at Sears, Roebuck or Montgomery Ward?"

The exchange can react to special circumstances such as the build-up in Vietnam more smoothly than military commissaries (grocery stores). It is widely agreed that the traditional restraints hobble them badly.

If the PX was subject to the appropriations process, General McCord argues, "it'd take six months if you ever got the money at all."

ANNUAL AUDIT

General McCord argues that he is hardly on his own. There is an audit each year by a civilian firm. The exchange service checks major issues with the Armed Services Committee staff, much as big business checks price increases with the White House.

More important, there is an extensive system of internal controls, and its civilian head, Robert K. Jamison, is not an auditor but a man with more than 25 year's experience with PX operations in the field.

"The emphasis is not on adding two and two and getting four," Mr. Jamison says. There are shelves full of regulations, and his staff is blunt and unforgiving about the most serious and most trivial transgressions. Some examples are:

Officials in Vietnam based their orders on sales, without considering items that had been unavailable, and helped produce shortages. Twelve of 22 main stores were out of safety matches, and a main depot had seen none for eight months.

A food concessionaire at Fort Benning, Ga., was reminded of contract specifications—but not penalized—after he had sold steak sandwiches for 45 cents instead of 40 cents and had served three ounces of meat instead of four.

The exchange headquarters leased office space from a prominent businessman, James S. Lee, and violated command regulations by paying the rent for a full year in advance and by paying more than the officially established ceiling.

DETAILED REGULATIONS

The regulations are systematic and handy and detailed enough to produce the complaints from auditors that a few documents were not "securely fastened" to their file folders. But sometimes things are not so pat.

There is considerable evidence that the exchanges lack enough really broad review, an independent skepticism that is aimed at entire ventures and policies and is difficult to mount from within. Some examples include the following:

Impatient with the Pentagon's pace in providing store facilities from appropriated funds, the exchanges simply started building their own and spent $151 million before a startled Congress asked for a "clarification of procedures."

The Army and Air Force Exchange Service has poured its goods into Vietnam despite a notorious and thriving black market, allowing no more than 7 per cent of its total customers, in the midst of a war, to account for 15 per cent of its sales.

With scarcely a word to anyone, the exchanges began awarding single worldwide contracts to one or two large companies, thus abruptly dropping many smaller concerns though many customers like wider selections.

Concessionaires are loosely controlled, especially in Vietnam where many operate entirely on their own, and companies that supply shoddy goods or commit other infractions are rarely penalized or even named.

"We're almost forced to give a guy a second chance all over again," an official remarked, "because invariably you're called on to justify whatever you've done through political channels."

DISTRICT OF COLUMBIA CRIME SUMMARY

Mr. MATHIAS. Mr. President, to remind the Congress of our continuing responsibilities to the people of the Dis-

trict of Columbia, I ask unanimous consent to include in the RECORD at this point two items dealing with crime in the Nation's Capital.

One is the discouraging list of crimes committeed in the District on yesterday, as summarized in the Washington Post this morning. The second is a more encouraging article, from yesterday's Evening Star, announcing the formation of the city's second youth courtesy patrol, to begin Monday in the Shaw area. This patrol, similar to one which is operating successfully in the Mayfair-Paradise housing complex, is composed of teenagers who will patrol their neighborhood in the evenings to prevent and discourage crime.

I commend the members of this patrol, the city government and all involved for this new effort to involve citizens actively in crime prevention. This is a good example of the type of effort which the Congress should actively promote to supplement the policy improvements which we ourselves must obtain.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington (D.C.) Post, Feb. 28, 1970]

WOMAN, 77, BEATEN AT NW CHILDREN'S STORE

A 77-year-old Washington woman was found beaten unconscious yesterday morning on the floor of a Connecticut Avenue children's shop where she had been working alone, police reported.

Police said two customers entered Bushee Children's Apparel, 1311 Connecticut Ave. NW at 11:40 a.m. and found Marguerite Ramme, of 2130 N St. NW, lying on the floor.

Her unknown assailants had apparently taken about $50 from the cash register, according to police.

Mrs. Ramme, who had been beaten in the head, was taken to George Washington University Hospital in serious condition. Yesterday afternoon, hospital officials said she had recovered consciousness but was still in serious condition.

In other serious crimes reported by area police up to 6 p.m. yesterday:

STOLEN

Two watches, an emerald and diamond brooch valued at $3,000, 10 $5 gold pieces, a silk scarf and a pair of French-made suede gloves, with an estimated total value of over $3,200, were stolen between 7 p.m. and 11:15 a.m. Wednesday from the home of Irving Ferman, of 3818 Huntington St. NW.

A total of $500 in $20 bills was stolen from a hall closet in an apartment at 4010 South Capitol St. SE. Charles Buck Jones, the owner of the apartment, told police the theft occurred between 8:30 a .m. and 9 p.m. Thursday.

A $600 Persian lamb coat was stolen about 8:05 p.m. Thursday from a car belonging to Lois Dandre, of Washington, while it was parked near her home in the 1400 block of 4th Street S.W.

A television set, a tape recorder, a fur coat, a jewelry box, a strand of pearls, two sets of earrings, 19 rings, four bracelets, a pin and a locket, with a total value of $1,033, were stolen from Mark E. Newman, when his apartment at 1603 S St. N.W., was burglarized about 12:40 p.m. Thursday.

Tools and a record player were stolen and several rooms and offices ransacked at Mott School, 4th and Bryant Streets N.W., sometime between 10 p.m. Tuesday and 8 a.m. Wednesday.

Approximately $800 in cash was stolen about 5:30 p.m. Wednesday from under the counter of a business located at 1301 E Street N.W.

Electronic phonograph equipment and a clock, valued at $1,030, were reported stolen Thursday from the home of Norwood L. Carroll, 305 Prince St., Alexandria, by burglars who forced open the door of the home.

ASSAULTED

Darrell L. Blagburn, of Washington, a Hendley Elementary School student, was treated at Cafritz Hospital for injuries he suffered as he was walking home from school Wednesday. Blagburn told police three young boys he recognized as fellow students attacked him at 6th and Chesapeake Streets S.E.

Gary B. Tolbert, of Washington, was treated at Rogers Memorial Hospital for wounds he received when he resisted a robbery attempt. Tolbert said a lone youth approached him at 4th and G Streets N.E., demanding money. When he refused, the youth hit him in the mouth and fled on foot.

ROBBED

High's dairy store, 2838 Alabama Ave., SE., was held up about 8:15 p.m. Thursday by two youths, one displaying a handgun who said to the clerk, "This is a stickup. Give me all the money. Give me all the green and put the silver in the bag too." Grabbing the sack full of cash, the pair fled on foot, north on Alabama Avenue.

Carmine Curtis, Joann Haltwanger, Patricia Ferell and Annie Jones, all of Washington, were held up Thursday while they were walking near Miss Haltwanger's home in the 3600 block of Jay St. NE. Two young men, one armed with a shotgun, approached them from the rear and demanded, "Hold it. Give me your pocketbooks." They took purses from two of the victims and a fur coat from a third, then drove off in a car occupied by two other men.

Tivoli Theater, 14th Street and Park Road NW., was robbed about 7:30 p.m. Thursday by three youths who told the cashier in her booth, "Give me the money, Miss. Walk, don't run." While one of the youths pointed a pistol at her, she handed the trio the cash and they ran east on Park Road.

High's dairy store, 5630 Georgia Ave. NW., was held up about 12:45 p.m. yesterday by a youth wielding a revolver who handed the clerk a brown grovery bag and ordered, "Put the money in the bag." Taking the sack full of money, the gunman said, "You all take it easy," and fled out the front door.

High's dairy store, 5002 1st St. NW., was held up about 1:05 p.m. yesterday by a teenager armed with a revolver who forced the clerk to put the money into a brown paper bag and fled from the store.

Irving Wallace, of Owings, Md., was held up about 3:30 p.m. Thursday in the 1100 block of 13th Street NW., by two men, one of them concealing a gun in his pocket. The gunman forced Wallace to surrender his money and the five pair of pants he was carrying over his arm. The pair fled north on 13th Street from Massachusetts Avenue.

Weldon Alphonso Carter, of Washington, a taxi driver, was held up about 3 a.m. Thursday by a young man who hailed his cab at Nichols Avenue and V Street SE., and asked Carter to driver him to Langston, and Peynolds Place SE. At that location, the passenger told Carter he had to go inside to get money for the fare. When he returned, he pointed a rifle at the driver and demanded his money. After handing the armed man his cash, Carter drove off and the gunman fired two shots after him.

Margarite Buck, of Washington, was admitted to Rogers Memorial Hospital for a fractured shoulder she suffered during a robbery near her home in the unit block of 9th Street NE., about 10 p.m. Thursday. A man approached her and struggled with her before escaping with a purse containing her salary check and another check. During the scuffle, Miss Buck received knee and facial lacerations as well as the shoulder injury.

Horace Dun, of Washington, was held up about 9:40 p.m. Thursday as he was delivering a passenger in his taxi to the 1600 block of Kramer Street NE. Two young men brandishing guns approached Dun and his passenger, demanding money. After handing their cash to the gunmen, the driver and passenger fled into a house in the block.

Wings 'N' More Wings, 1839 Benning Rd. NE., was held up about 2:20 p.m. Thursday by two youths who ordered fish sandwiches. As the clerk was preparing the order, one of them reached across the counter and grabbed the money. The pair escaped on 19th Street.

Addie Gay Williams, of 800 Southern Ave. SE., was held up about 9:20 p.m. Thursday in the parking lot adjacent to her apartment building. A young man got out of a taxi cab, pulled out a shotgun and told Miss Williams to hand over her pocketbook. Taking the purse, the gunman re-entered the taxi and escaped west on Southern Avenue.

Empire Liquors, 1800 14th St. NW, was held up about 4 p.m., Thursday by two young men armed with handguns who forced the owner to give them the money. The gunman removed the bills from the cash drawer, then escaped west in the 1400 block of S Street.

Steven W. Jackson, of Washington was held up about 11:30 a.m. Thursday as he was walking at Ontario Road and Euclid Street NW. Five teen-agers surrounded him, threatened him and fled with his money.

Lafayette Camp, of Suitland, was robbed about 4:30 p.m. Thursday in the unit block of 47th Street SE, as he was letting four men out of his car. The four, whom Camp had driven from Benning Road and East Capitol Street, forced the driver out of his car, took the keys, and drove off.

Douglass G. McPherson, of Washington, was held up in the 7400 block of Georgia Ave. NW, by a young man wielding a handgun who said, "Give me your money." The gunman took $5 from MacPherson's pocket and escaped in a yellow car.

Joseph H. Spriggs, of 1302 Fairmont St. NW, was held up about 3:10 a.m. Thursday by two men who entered his apartment while he was getting dressed. When Spriggs asked them what they wanted, one of them pulled out a revolver and said, "OK, let's have it." "Have what? I don't have any money," Spriggs replied. The gunman then directed his partner to search Spriggs and another victim, Lee Crutch. The pair took a watch from Crutch and money from Spriggs whom they tied up before fleeing out the front door.

Alexander Williams, of Washington, was held up about 6:35 p.m. Thursday in the alley of Ainger Place SE, by a young man demanding money. The man pointed a pistol at Williams, grabbed the money he offered and fled on foot.

Diana Armstrong, of Washington, was held up about 8:50 p.m. Thursday as she was walking on the corner of Upsal Street and Horner Place, SE, by five men who drove up to her in a taxi. One of them held a sawed-off shotgun on her and demanded money. Taking her purse containing $2, the men escaped north on Horner Place.

Patty Vaugn, of Washington, was held up about 2 a.m. yesterday in the 3800 block of 9th Street SE, by two youths, one carrying a long-barreled shotgun. "Hand over your pocketbook," the gunman ordered and grabbed the purse containing a check and a credit card. The man escaped in a green car occupied by two other men which headed east towards Southern Avenue.

Mary Hollander, of Washington, was held up about 7 p.m. Thursday in the 100 block of 12th Street SE, by a young man brandishing a handgun. "Give me your money and

you won't get hurt," the gunman demanded and ran south with the bills.

Brightie Henderson and Velma Oliver both of Washington, were robbed Thursday as they were walking near their home in the 700 block of 5th Street NE, by a man who approached them saying, "This is a holdup," Seaching their pocketbooks, he removed $5 and papers from one and the cash from the other, then fled into an alley.

Store, at 1130 Constitution Ave. NE, was held up about 2:40 p.m. Thursday by a youth who warned the owner, Wallace Parker, "This is a stickup. Give me all you got." The youth took the money Parker handed him and ran out the front door, north on 12th Street.

George F. Taylor, of Landover, an employee of the United Parcel Service in Landover, was held up about 4:10 p.m. Thursday in the rear of the 700 block of Lamont Street NW, by two young men, one with a gun in his pocket, who warned, "Don't move. Where is the money?" After Taylor handed them the cash and checks from his pocket, one of the men asked, "Where is the ring?" When Taylor said he didn't have one, the men warned him not to move and fled on foot.

Boulevard Heights Market, 4900 Byers St., Boulevard Hgts., was robbed at 1:10 p.m. Thursday by an armed man who took money, Prince Georges County police said.

[From the Washington (D.C.) Evening Star, Feb. 27, 1970]

DETERRENT TO PETTY CRIME: TEENAGED PATROL STARTS MONDAY IN SHAW AREA

(By Roberta Palm)

There'll be a new bunch of teen-agers hanging around the bus stops, schools and alleys in the Shaw area starting Monday.

Instead of being the policeman's nemesis, they will augment the District's law enforcement officers.

They are the city's second Youth Courtesy Patrol, a group of teen-agers between 13 and 19 who will scan the area weekdays from 5 p.m. to 9 p.m.

Wearing bright orange caps and jackets to make themselves highly visible members of the patrol will attempt to be "a deterrent factor" for petty crime, James L. Jones, director of the Mayor Walter E. Washington's youth program, said. The mayor this week praised the patrol for involving citizens in anticrime programs.

Another who said he was extremely pleased that the corps would be in the Shaw area, where an estimated $300 million will be spent this year on urban renewal projects, was the Rev. Walter Fauntroy. He is president of the Model Inner City Community Organization, which is planning the Shaw urban renewal. A youngster will think twice before he vandalizes a construction site with the patrol around, he said.

ALARM AND REPORTING

Surveying schools, churches, construction sites and bus stops, the 50-member patrol under the direction of Lawrence Thomas will act as alarm and reporting units. The patrol will not be a law enforcement agency, Jones said.

The Shaw patrol stems from the success of a similar corps in the Mayfair-Paradise housing complex which has assisted persons in over 1,000 incidents in its four months of operation.

Thus far, the Mayfair corps has assisted more than 600 persons to and from bus stops, foiled more than 10 robbery attempts, reduced incidents of vandalism, assisted paperboys on their collection routes, and prevented one attempted suicide.

Traveling in three-man patrol teams, the young men will patrol 6th, 7th and 9th Streets NW and from U Street to about New York Avenue from their headquarters at 7th and T Streets NW.

Members will call their headquarters when they suspect foul play and Thomas will in turn call the police for help, Jones said. This procedure has worked well at Mayfair-Paradise, Jones said, and residents have had no complaints about the speed to which the police respond.

ONLY $1,500 USED

The initial funding for the unit has come from private citizens, and in the case of the Mayfair project only an estimated $1,500 has been used. Local citizens have collected almost $300 for buying gear for inclement weather.

The young men of the Shaw patrol and its staff will work as volunteers. The patrols will be extended to public housing units next if they are successful in the Shaw district.

The original Mayfair courtesy patrol was an outgrowth of youth units that have operated in various cities throughout the nation.

In 1967, youth patrols were used in connection with civil disorders in at least nine cities. Through the first eight months of 1968, the units were active in at least 11 cities, including Boston, Newark, Pittsburgh and Los Angeles.

OCEAN RESOURCES REVENUES AND FOREIGN AID

Mr. FULBRIGHT. Mr. President, on Thursday last, the distinguished junior Senator from Rhode Island spoke at the International Development Conference here in Washington and presented the rather intriguing thesis that revenues derived from future exploitation of ocean-bed resources could enable the creation of a truly multilateral development assistance effort.

As the starting point for such an effort, Senator PELL's proposal envisions the creation of a new U.N. mechanism designed specifically for the purpose of licensing the exploitation of seabed resources and collecting fees on the revenues derived from it.

Having long advocated the multilateralization of our own aid program, I strongly believe this proposal merits the most serious consideration. In fact, the way I read Senator PELL's proposal, it offers a course of action whereby we and all the other industrialized nations could eventually get out of the bilateral aid business altogether, and I, for one, am firmly convinced that is precisely where we belong.

I know that I need not remind my colleagues of the bitter frustrations we all suffered during the last foreign aid confrontation. But the one thing we ought to have learned from that experience is how urgently we need new approaches on the aid question—approaches which will resolve the inherent limitations and embarrassing drawbacks that have become so glaringly evident over the past several years.

It is in the sense of offering a meaningful alternative to our own unrewarding aid efforts that I direct the attention of my colleagues to Senator PELL's proposal. I know that Senators will want to give this proposal careful consideration, and I strongly urge the administration to do likewise—particularly in view of the State Department's announcement a few days ago that—

The United States is prepared to lead the way toward a true internationalism in the oceans.

I ask unanimous consent that the full text of Senator PELL's statement be printed at this point in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

REMARKS BY SENATOR CLAIBORNE PELL AT INTERNATIONAL DEVELOPMENT CONFERENCE, MAYFLOWER HOTEL, WASHINGTON, D.C., FEBRUARY 26, 1970

It is a great pleasure for me to be with you this morning at this International Development Conference.

It is unnecessary, I know, for me to speak to this audience of the importance of effective international development programs. The still-growing gap between the wealth and living standards of the developed and less-developed countries is a prickly and nagging thorn in the sensitivities of those who believe in the brotherhood of all men.

Even for those whose sense of brotherhood and compassion may have become somewhat calloused in these troubled times when our involvement with other nations seems to bring us grief rather than gratification, the widening chasm between the wealth and welfare of the nations of the world should be a source of concern. In terms of hard self-interest, despair among the peoples of the poorer nations poses an enduring threat to the peace of the world. And in this shrunken world, bristling with the enormously expensive weapons of super-war, a world bouncing giddily along a tightrope of strategic terror that is alternately taut and slack—in this world, peace must be the first national priority of all nations. It is a world in which war is not the instrument of rational policy, but can be the product of despair and resentment. And in those terms, we cannot afford despair; we cannot afford the conditions that breed despair.

In these circumstanecs, the need for effective instruments of international development becomes compelling. This morning we are concerned with one facet of the search for such effective mechanisms—the need for new sources of finance for international development.

I suggest that one potential source of revenue that deserves consideration—more consideration that it has been given—are the resources of the oceans.

Indeed, given adequate and reasonable international arrangements and the continued advance of ocean technology, I believe it possible that revenues from ocean resources could in the near future lift from this country and others the major burden of national foreign aid programs.

Can and should we expect the oceans to yield revenues for international purposes? I believe the answer is "yes," or perhaps more accurately, "yes, but . . ." I say "but" because the conditions—political, diplomatic, and technological—under which ocean resources can fuel the engines of international development do not now exist.

Let me review briefly the international, political, diplomatic, and technological conditions that do exist.

First, we know that resources of the oceans, and the underlying seabeds, are immense. The oceans cover more than two-thirds of the area of the earth. They are far from fully explored, and indeed, constitute the last great physical frontier for man.

But resources there are—a profusion of metallic nodules on the ocean floors that contain not only manganese but aluminum, nickel, and cobalt. It is estimated that the petroleum deposits beneath ocean waters exceed all of the known reserves of petroleum on the continents of the world.

The waters of the oceans themselves contain a staggering quantity of minerals, as well as a rich marine life that awaits more efficient and fuller utilization to meet the protein demands of a rapidly growing world population.

But, for the most part, these resources do not now constitute wealth. They represent, rather, an economic potential.

At present, only petroleum ranks as a significant economic product of the lands beneath the sea. Undersea sources now produce 17 percent of the oil and 6 percent of the gas now consumed by non-Communist countries. The annual world value of oil from subsea wells is about 4 billion dollars. But the estimates are that during this coming decade, with a rapidly growing world market for petroleum, production from beneath the sea will grow even faster, and that by 1980, fully one-third of the world's petroleum will come from beneath the oceans.

In comparison, the production at present of other minerals from beneath the sea currently is insignificant. It is somewhat surprising, for example, to consider that next in rank in terms of value is sand and gravel, whose annual production from subsea areas is estimated at about 200 million dollars. In addition, about 175 million dollars worth of salt is extracted yearly from sea water, about 700 million dollars worth of magnesium, and about 50 million dollars worth of other minerals.

It is important to note that all or nearly all of the subsea mineral is currently from the relatively shallow continental shelves, which terminate at an average depth of 200 meters, and at the deepest known point, at 550 meters. Nearly all of these areas clearly lie within the jurisdiction of adjoining nations.

It is equally important to note, however, that according to present indications, the largest and richest mineral deposits yet to be exploited lie at greater depths beyond the edges of the continental shelves, beneath the continental slope, and the continental arise, and on the ocean floor itself, at depths up to 2,500 meters or more.

Two problems cloud the future of economic exploitation of these mineral deposits. First, the technology does not now exist for economic exploitation of minerals at these depths. And second, the ownership, the jurisdiction over this area of the seabed, is unresolved.

Let me deal first with the technology. The deepest producing off-shore oil well now is at a depth less than 600 feet below the water surface. But exploratory drilling has disclosed indications of petroleum deposits in some subsea areas at depths up to 12,000 feet. Technology for economic recovery of subsea minerals is advancing rapidly and will accelerate, as mineral deposits in shallower waters are exploited and as exploration reveals the location of deposits in deeper waters.

We have, I think, consistently underrated the rate of advance in technology, and where a strong economic incentive exists, as it does in this case, it is realistic to expect dramatic technological advances during this decade.

But who owns these mineral deposits? Who has the right to explore and extract them? International law today provides no answer, and in that legal vacuum lies both a hazard to international tranquility, and an opportunity.

The Geneva Convention of 1958 provides only an ambiguous limit to the extent of national jurisdiction over adjacent subsea areas. That Convention provides national jurisdiction to a depth of 200 meters, but beyond that depth jurisdiction becomes highly uncertain. The ambiguity of this provision posed no problem 12 years ago when exploitation at even 200 meters was purely hypothetical. But advances in technology and discoveries of the extent of potential subsea mineral resources have since made it abundantly clear that new international agreements are needed first to delineate unambiguously the limits of national jurisdiction on the seabeds, and secondly to establish an adequate international regime for those subsea areas that lie beyond any national jurisdiction.

Confronted with these circumstances, there are those who reject the idea of new international agreements and advocate instead a "fustest with the mostest" approach that would, in effect, leave the wealth of the seabeds to an open competitive scramble. Others would permit nations, through unilateral action, to claim such broad subsea areas, adjacent to their coasts, that jurisdiction over the remaining subsea areas would be largely an academic question.

On the other extreme are those, who in the interests of national security and preserving the maximum scope for the traditional freedom of the seas, advocate a very narrow area of national jurisdiction over the seabeds.

There is room for reasonable compromise between these positions. I have proposed, in a Senate resolution, a draft treaty which would place the limits of national jurisdiction at a depth of 550 meters, or a distance of 50 miles from shore baselines, which ever provides the greater area. As I have noted, 550 meters is the greatest depth at which the edge of a continental shelf is known to lie.

In addition, my proposal calls for establishment of an appropriate international body under the auspices of the United Nations, with authority to grant exploitation licenses for the areas beyond national jurisdiction, and to collect suitable fees and royalties.

In my proposal I have not specified what the fee or royalty should be. But I think a reasonable royalty for exploitation in international areas would be comparable to the royalties and fees now collected by the United States Government for mineral exploitation on our continental shelf. And if ocean resource development is to be encouraged, such fees certainly should be less than the exorbitant fees, royalties, and payments now extracted from Petroleum companies by Middle Eastern countries, for example.

Neither have I specified the purpose to which these funds should be devoted by such an international organization. But it would seem to me that the nations of the world through such an organization might well decide that use of these receipts, this usufruct, would best be devoted to financing of development in the poorer nations of the world.

Ambassador Pardo of Malta, who has done so much to focus attention on this problem at the United Nations, has specifically proposed that funds from ocean resources be dedicated to this purpose.

The President's Commission on Marine Science, Engineering and Resources, in its report a year ago, also proposed that a portion of the revenue derived from subocean mineral exploitation be channeled through royalty payments to international organizations for, among other purposes, assistance to developing nations.

In all of this, however, our own Government has been unable to formulate a national policy. The Executive Branch thus far has put forward general principles. The President, for examples, in his Foreign Policy Report to Congress last week said:

"The most pressing issue regarding the law of the sea is the need to achieve agreement on the breadth of the territorial sea, to head off the threat of escalating national claims over the ocean. We also believe it important to make parallel progress in the U.N. toward establishing an internationally agreed boundary between the Continental Shelf and the deep seabeds, and on a regime for exploration of deep seabed resources."

I am gratified at the President's recognition of the importance of resolving these questions. However, while these statements constitute a recognition of the problem, they do not constitute a policy The United States does not yet have a proposal to put forward at the United Nations on what the legal delineation of the continental shelf should be, nor, even in the most general terms, what kind of international regime would best serve our national interests. And while I would not place too great an emphasis on this point, I think it unfortunate that the President spoke of an international regime only in terms of exploration, and would hope he was not specifically excluding exploitation from the authority of such a regime.

A final point which must be considered in a discussion of the prospects of obtaining development revenues from seabed resources is the viewpoint of the less developed countries themselves. It is a highly important factor, for whether the views of the less developed countries are well-grounded or not, realistic or not, their views constitute hard international political facts with which the United States Government must deal at the United Nations and in our relations with these countries.

The less developed countries are well aware of the fact that only two countries, the United States and the Soviet Union, have the potential resources and the technological potential to exploit seabed resources. But, as I read their sentiments, they are not inclined to permit these two super-powers to divide among them the resources of the oceans—resources which they quite legitimately consider to be the heritage of all mankind.

The attitudes of the less developed nations found expression in two resolutions adopted by the United Nations General Assembly in December. One of these resolutions calls upon the Secretary General to explore with the member nations the desirability of holding an international conference on all outstanding questions of law of the sea. A second resolution states that all nations "are bound" to refrain from exploitation of resources beyond the limits of national jurisdiction.

These resolutions, I should note, were passed by votes of 65 to 12 and 62 to 28, over the opposition of the United States and the Soviet Union. I am not saying that this country should have supported these resolutions, because I believe the resolutions were most certainly imperfect. But the example demonstrates the difficult position in which this country may find itself for lack of a policy in this area.

These then, are the technological, economic, and international diplomatic factors that enter into consideration of ocean resources as a source of development finance.

The problems involved are clear.

What of the opportunities I mentioned earlier? Ocean resources as a source of development finance offer a number of very attractive features.

If we are able to establish through international agreement a reasonable limit on national jurisdiction over subsea areas, and establish also a sound regime for the administration of the area beyond national jurisdiction, then the basis will have been laid for a potential source of development finance. It would be a source of development finance in which the less developed nations themselves would share a proprietary stake. It would be a source of development finance free from the entanglements, embarrassments, and difficulties of the bilateral development assistance programs with which we are so familiar.

Support within the United States for development assistance programs financed by tax dollars has dwindled to an apparent all-time low. An alternative, or a supplement to this approach, even though it may not be immediately effective, would be welcome, I believe, both by the American people and by a good many members of Congress.

Even those in this country who are the most ardent supporters of foreign assistance programs have grown exceedingly weary of the perennial public and Congressional hassle over foreign assistance.

That is one major reason why the theme of this conference—"The Need for New Departures"—is appropriate and timely, and why the topic this morning—"New Sources for Financing Development"—is vitally important. It is a reason also why serious consideration should be given to the resources of the world ocean as a new departure, and as a potential new source for financing development.

I would emphasize that the unresolved questions of seabed jurisdiction must, at any rate, be resolved in the near future, regardless of any possibility that ocean resources could help finance development programs. If these questions are not resolved rationally by the formation of policy, they will be resolved by unilateral actions and claims of nations, with the probable result of increased international conflict and tension.

The alternatives, to my mind, are clear. The oceans' resources can serve either to divide or to unite mankind. I earnestly hope it will be the latter.

DECISION ON TITLE I

Mr. RIBICOFF. Mr. President, I was pleased this morning to read of Dr. James E. Allen's decision as Commissioner of Education to require school districts throughout our country to establish that they are putting equal funds into their schools before they can receive supplemental Federal assistance.

This reform is long overdue.

We passed title I of the Elementary and Secondary Education Act to provide special assistance to disadvantaged children.

All too often this has not been the case. Federal funds have been used for purposes other than education or in lieu of State and local assistance.

I applaud Dr. Allen's decision and hope that it is only the first step in a realistic program to insure quality, integrated education for all children in this Nation.

I ask unanimous consent to include at this point in the RECORD, the article by John Herbers from this morning's New York Times reporting Dr. Allen's decision.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SCHOOL EQUALITY SET AS CRITERION FOR FEDERAL AID

(By John Herbers)

WASHINGTON, February 27.—The Office of Education announced today that it would require every school district in the nation to demonstrate that it was putting equal resources into all of its schools before it would be eligible to receive supplementary Federal funds for disadvantaged children.

Dr. James E. Allen Jr., the Commissioner of Education, said in announcing the action that a special investigation had confirmed widespread charges that many school districts put less resources into schools in poor areas than in more affluent areas and then use money distributed under Title I of the Elementary and Secondary Education Act of 1965 to bring the schools in poor areas up to par.

This practice is a violation of the law's intent to provide compensatory education for poor children. But so far the Office of Education has not been able to cope with the abuses.

SOME OPPOSED STEP

The action announced today, therefore, has broad implications. Some within Mr. Allen's department opposed the step on the ground that it would put the Federal office in a controversial enforcement position.

According to this view, the office will ultimately be called on to discipline local school officials for any practice of discrimination against minorities and other poor persons. Dr. Allen said at a news conference that a cut off of funds could result but that he hoped it would never come to that.

Title I is the largest program of Federal aid to education. Current appropriations are running to more than $1-billion a year.

Last year, 16,000 school districts received funds for helping educationally disadvantaged children. Currently, about 60 per cent of the money is going for reading programs.

STUDY GROUP NAMED

Last November, after civil rights organizations charged that much of the money was being misused by state and local officials, Mr. Allen appointed a 17-man study group headed by Timothy E. Wirth, deputy assistant secretary for intradepartment educational affairs, to investigate and recommend any changes that might be needed.

Dr. Allen and Mr. Wirth, appearing together at the news conference, said today that the investigation had quickly proved that there were abuses, chiefly in the area of "comparability" between schools within a district.

"We have found that the lack of comparability in services and expenditures has been a key factor in the ineffectiveness some Title I programs," Dr. Allen said. "Unless an equal base exists, a compensatory education program merely provides regular school services rather than making extra help available to the children who need it."

The law already requires "comparability" in services and expenditures, but Dr. Allen said the guidelines and methods of enforcement had been "fuzzy and ill defined."

Local officials have resented any interference from Washington and in a number of instances have defied efforts of the Office of Education to bring about reforms, according to private studies of the program.

To make the new Federal requirements more palatable to local officials, Dr. Allen is directing the state offices of education to require the districts to demonstrate "a comparability of services and expenditures" or to submit a plan showing that steps are under way to achieve comparability by the opening of school next fall. The states must submit their plans for doing so by April 1.

Dr. Allen said that he had discussed the move with state education officials and that they had agreed to it. Guidelines dated yesterday have been sent to the chief school officer in each state.

The guidelines say in part:

"Title I funds must not be used to supplant state and local funds which are already being expended in the project areas or which would be expended in those areas if the services in those areas were comparable to those for nonproject areas."

JUDGMENT HELD DIFFICULT

Judging what makes two schools comparable can be very difficult, Dr. Allen said, but he added that this could be done with some degree of accuracy by comparing per pupil spending and the ratio of teachers to pupils. Criteria for making the judgment were set out in the guidelines.

The Office of Education will supply whatever technical assistance the states need in carrying out the requirement, Dr. Allen said.

In some areas, particularly the South, the requirement could result in the improvement of black or predominantly black schools. It has not been unusual for a district to offer special education courses in all schools within the district but to pay for the courses with regular funds in the middle-class areas and with Title I funds in the poor areas.

Dr. Allen was asked what was being done about another complaint made by the civil rights groups—that districts were using Title I money to buy special equipment for use by all schools in both affluent and poor neighborhoods. He said the office had not yet explored that.

"We are taking up these issues one at a time," he said.

SCHOOL DISTRICT'S CRISIS

Mr. DOLE. Mr. President, in our consideration of H.R. 15931, much attention and discussion have been given to the role of aid impacted areas. There has been criticism, much of it valid, that impact aid has been distorted.

I would, however, point out an example of the real and devastating impact Federal operations and dealings in property can have on school districts whose revenue base is severly diminished by large Federal facilities.

In rural Johnson County, Kans., the Sunflower Army Ordnance Plant was constructed during World War II on a nearly 10,000-acre tract. To provide living quarters for the workers and their families, Federal residential housing was constructed off the plant grounds. The plant was deactivated after the war and reactivated during the Korean conflict and again for the Vietnamese war.

The plant site has remained Federal property, but the residential housing, known as Sunflower Village, was sold to private interests and has been utilized as low-rent housing for the past several years. Rising educational costs, combined with the low valuation of the Sunflower Village property, the large number of school-age children living there and the removal of the ordnance plant from the tax rolls, have created a nearly intolerable situation for the local school district.

The Department of Health, Education, and Welfare acknowledges the inadequacy of current statutory authority to provide relief for the efforts of such disposal of federally constructed housing onto local tax rolls at low valuation.

Once such property has been disposed of by the Federal Government, the problem of providing adequate aid seems to fall to the State educational system. However, the Federal Government's practice, giving rise to such inequitable situations, should not be allowed to continue without appropriate measures to prevent strapping local tax bases with unmanageable burdens.

Senator PEARSON, Congressman WINN of the Third Congressional District and I have conferred numerous times on this problem. I am taking this opportunity

to apprise the Senate of this unfortunate situation which arose from governmental action unaccompanied by foresight or appreciation for the consequences.

The difficulty is thoroughly detailed in a letter I received from Mr. Jerry Stark, superintendent of Kansas Unified School District No. 232, which is involved in this unfortunate costs-revenue squeeze.

As Mr. Stark points out, the overriding difficulty of his district will be further aggravated by the reductions proposed in category B funds. The total blow will be softened to some extent by the provision that category B payments not be reduced by an amount in excess of 5 percent of the district budget for the past year.

Mr. President, I ask unanimous consent that the pertinent portions of Mr. Stark's letter be printed in the RECORD at this point. His summation of the situation his district faces is both clear and compelling.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

Senator ROBERT DOLE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DOLE: Senator, I am enclosing a copy of the total property tax, both real and personal, paid by Quickway Homes, Inc. to support the schools in Unified School District No. 232. Quickway Homes, Inc. are the owners of the housing area known as "Sunflower Ordnance Village". Total taxes received amounts to $18,611.27 or $30.66 per student residing in the Village. This figure of $30.66 compares *most unfavorably* with the remainder of the District which must raise in ad valorem taxes approximately $720,000 or approximately $600.00 per student. (This includes General Fund, Bonds, Social Security, and Special Capital Outlay as does the $30.66 figure.)

It becomes apparent, I believe, that the unloading of "Sunflower Ordinance Village", as low rent housing, upon the patrons of U.S.D. 232 has caused an unfair burden which our people can no longer stand. We now have an educational levy in excess of 100 mills. Also, the elimination of P.L. 874, Section 3-b as now proposed would further jeojardize our position financially as we currently have about 450 students (25% of our student body) qualifying for 3-b money which approximated $80,000 or roughly 10 mills.

Furthermore, it seems ironical and most unjust for the Federal Government to remove approximately 10,000 acres from our tax rolls and then lease such property to private organizations without remitting some portion of the proceeds to the local school district in lieu of taxes. May I cite two examples?

One, U.S. Industrial Chemical Corp., a subsidiary of National Distillers and Chemical Corps., 99 Park Avenue, New York, N.Y. is presently leasing a portion of the plant site for an estimated $75,000 per year.

Two, O'Brien Bros. Ranch of Ft. Scott, Kansas is presently leasing the grazing rights for $6,500 in cash payments plus leasee services estimated to cost an additional $75,000. (Lease services includes mowing twice a year and adequate application of fertilizers costing an estimated $70,000.) Additional details concerning these arrangements may be obtained from the District Corps of Engineers.

Lastly, if I can provide additional information, appear before any congressional committees, etc. please feel free to contact me. A solution to this problem is most urgent.

Sincerely,

JERRY B. STARK,
Superintendent of Schools.

STATEMENT BY SENATOR HRUSKA BEFORE THE CONSTITUTIONAL RIGHTS SUBCOMMITTEE

Mr. HRUSKA. Mr. President, I ask unanimous consent to have printed in the RECORD the text of the statement I made at the hearing on the Voting Rights Act before the Constitutional Rights Subcommittee of the Committee on the Judiciary, on February 18, 1970.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR HRUSKA—HEARING ON VOTING RIGHTS ACT, CONSTITUTIONAL RIGHTS SUBCOMMITTEE, FEBRUARY 18, 1970

Mr. Chairman, last July this Subcommittee had hearings on a number of Senate proposals to amend and to extend the Voting Rights Act of 1965. Our hearings on those Senate bills were extensive and balanced. We heard from many witnesses, including Attorney General John Mitchell. Since our hearings a House bill has been considered and enacted by the House to accomplish this purpose. That bill is H.R. 4249, which, together with the Senate bills on which testimony was received in our hearings, is now pending before this Subcommittee.

H.R. 4249 was introduced in the House at the same time that S. 2507 was introduced in the Senate. They were identical bills, and were introduced on behalf of the Nixon Administration. Since the 1965 Act expires this August, the Administration sought to introduce appropriate legislation early in the 91st Congress to permit enactment before the existing law expired. This was a laudatory goal, and the Department's prompt sponsorship has permitted the Congress to move forward. Only Senate action is now required.

The bills before this Subcommittee, and those considered by the House, fall into two basic categories: those that seek merely to extend the 1965 Act, and those that seek to amend as well as extend the 1965 Act. H.R. 4249 seeks to amend as well as to extend. The difference, in my opinion, is primarily that of approach rather than of objective. They share the same fundamental purpose, that is, to enforce the guarantee of the 15th Amendment of the U.S. Constitution that the right to vote shall not be denied on account of race or color.

Both approaches are committed to the need to make more effective the voting rights of our citizens who are being denied the vote due to racial discrimination. However, H.R. 4249 goes further. It seeks, in addition, to make more effective both the rights of persons nation-wide who are denied the opportunity to vote because they are under-educated and the rights of those who are denied the opportunity to vote in presidential elections because they cannot meet local residency requirements.

Both approaches provide procedures for the appointment of federal voting observers and examiners. The 1965 Act, however, applies this procedure only to six states and parts of three others. H.R. 4249 would, on the other hand, extend this procedure to every state of the nation.

Both approaches provide procedures for challenging the laws of states or political subdivisions which are allegedly discriminating against the right of citizens to vote due to race or color. Again, basic remedies of the 1965 Act apply only to six states and parts of three others. H.R. 4249 would apply to all states equally.

I think these differences are strong arguments for H.R. 4249. The Nixon Administration unqualifiedly supports this proposal, and the House, by a majority vote, adopted this proposal. Let us consider its broad merits.

First, it abandons the onus of regional legislation that exists with the 1965 Act. That Act was passed, as I recall, for the purpose of bringing extraordinary remedies to bear on a few states of the union where voting discrimination seemed most prevalent. This judgment was based on the registration and voting records of these states in the 1964 presidential election. The Act's formula was a departure from the general rules of good legislation, and, I feel, was a troublesome precedent for the future of our federal-state relations. The Congress, however, considered the problem to be critical and the formula contained in the 1965 Act to be the only solution. I want the record clear at this point that I voted for that Act, and am satisfied that the remedies applied had salutary results. We were told at our hearings last year that over 800,000 Negroes have been registered in the covered states since passage of the Act.

Mr. Chairman, times and circumstances change. Problems, while once critical and demanding of extraordinary remedies, over time evolve toward solutions. Registration in these affected states is now as good or better than in many other states in the union. Extraordinary remedies, in my opinion, should be necessary only to restore a situation to circumstances that can be dealt with by traditional and proven procedures. In my opinion, that time has come.

Next, H.R. 4249 extends the scope of the Attorney General's power to correct abuses of the 15th Amendment rights anywhere in the country. This bill grants him direct authority to send federal voting observers and examiners to any of our fifty states. It clarifies his power to bring lawsuits and obtain injunctions against discriminatory laws in any state or political subdivision in the nation. It extends his power, once a particular case of discrimination has been proven in a court of law, to suspend future laws or practices in the appropriate states or subdivisions as long as the federal court having jurisdiction considers it necessary. Thus, while H.R. 4249 would relieve the six presently covered states from the burden of regional legislation, it would not weaken the Attorney General's ability promptly to correct voting abuses anywhere in the nation, including those states.

I think that it is obvious that discrimination does not exist in just one part of the country. Unfortunately, discrimination occurs in different places, in differing degrees, all over the country. The Administration's recommended bill would extend coverage of the Voting Rights Act to all of those instances of discrimination.

A third change from the present Act is that the Administration's bill will return the thrust of enforcement back to the judicial processes and away from the administrative procedures which now exist. This is important. Our system of government is based on checks and balances and the judiciary has been the most consistently reasonable and fair arbiter in this system. Administrative procedures, in place of judicial remedies, might be necessary under extraordinary conditions, but should not be extended once the basic conditions improve. The unreviewable suspension power of the Attorney General over state and local laws contained in the 1965 Act is such an administrative power; it has served its function. Registration and turnout of voters in the covered states has greatly increased. Let us now return to our courts of law.

Furthermore, H.R. 4249 prohibits the use of literacy tests in any state in the nation. The 1965 Act was directed at the discrimination against Negroes in southern states resulting from use of literacy tests. However, it is becoming a well-known fact that literacy tests have the effect of discriminating against all educationally-disadvantaged citizens, of all races and colors. As Attorney General John Mitchell stated during the Subcommittee hearings last July:

"The widespread and increasing reliance on television and radio brings candidates and issues into the homes of almost all Americans. Under certain conditions, an understanding of the English language, and no more, is our national requirement for American citizenship.

"Perhaps, more importantly, the rights of citizenship, in this day and age, should be freely offered to those for whom the danger of alienation from society is most severe—because they have been discriminated against in the past, because they are poor, and because they are under-educated. As responsible citizenship does not necessarily imply literacy, so responsible voting does not necessarily imply an education. Thus, it would appear that the literacy test is, at best, an artificial and unnecessary restriction on the right to vote."

A recent study shows that, in general, states of the North and the West which have literacy tests have lower registration and turnout rates than those without literacy tests. It can be little doubted that literacy tests in all states that have them inhibit voting by minority group persons. A nation-wide ban on literacy tests, as proposed in H.R. 4249, would add numbers of educationally-disadvantaged blacks and whites, Mexican-Americans, Puerto Ricans, and American Indians to the voting rolls.

Finally, Mr. Chairman, the Administration bill will limit the application of state residency requirements in presidential elections. It may be reasonable to require a period of residency for local elections, but such a requirement has no relevance to presidential elections. Presidential elections receive nation-wide coverage, and the issues are nationwide in scope. The Bureau of the Census indicates that 5.5 million persons were unable to vote in the 1968 presidential election due to local residency requirements. In an increasingly mobile society, this problem must be resolved.

Mr. Chairman, I urge the members of this Subcommittee, and the witnesses who appear before us, to retain sight of the goal which we all share. That goal is to guarantee the right of each citizen to vote, recognizing in this guarantee that voting is the most fundamental right in a democratic society. The prominence of this right to the durability of our system, and the dedication we all share to enforcing that right, should lend dignity and calm reason to our inquiry.

The results under the 1965 Act are impressive, and all thoughtful men recognize that the Act has served the extraordinary purposes for which it was enacted. On the other hand, the facts and circumstances on which its regional remedies were based have changed. We should not assume that it is necessary to preserve the Act without charge in order to continue the most active nationwide enforcement of the right to vote for all of our citizens.

CRIME IN THE DISTRICT OF COLUMBIA

Mr. MATHIAS. Mr. President, the distinguished Washington news commentator, Joseph McCaffrey, recently interviewed Edward Bennett Williams on the subject of crime in Washington. The colloquy that resulted is of such importance that I feel it should be available in the RECORD and I submit it as it was published in the Washington Post. I also submit the concurrent editorial in the Post of today. Both of these items, like the daily reports of crime, should remind the Congress of its unfulfilled obligation in this area.

There being no objection, the editorial and article were ordered to be printed in the RECORD, as follows:

AN ATTORNEY'S VIEW OF THE DISTRICT OF COLUMBIA CRIME SITUATION

(NOTE.—Trial Attorney Edward Bennett Williams, one of a number of civic leaders who have recently met together in search of new solutions to the problem of crime in Washington, was asked about some of his conclusions in a recent interview with Joseph McCaffrey on WMAL–TV. Following are excerpts from the interview:)

MCCAFFREY. As an attorney and a trial attorney, are you concerned about what we all refer to rather too liberally, perhaps, as the rising crime rate?

WILLIAMS. I am terribly concerned about it. I'm terribly concerned about it at the national level, and I'm terribly concerned about it here in our city. We've been called the crime capital of the world, and I'm afraid it's with some validity. Crime has been spiraling out of control in our city . . .

There are all kinds of crimes, but the crime I think that has bestirred the alarm of our country and the alarm of our city is the kind of crime that's directed against private property, and often attendant with violence to the person. I'm talking about robberies and muggings and yokings, larcenies and burglaries, which have been on the rise here in Washington and across the country. We have a terrible situation here in the District of Columbia. Last year there were 18,000 plus burglaries. There were 9,000 plus armed robberies, and there were 9,000 larcenies of property over $50.

And the thing that disturbs me most is that four out of five persons who committed a robbery on the streets of Washington went unapprehended . . .

MCCAFFREY. All right, now let me yield to you, without any interruption, and as an attorney, tell me what you think should be done to combat current crime rates.

WILLIAMS. I think the system has broken down in all three of its divisions. First of all, I think, we desperately need in our city, and I think we should take our city as symbolic of the 30 big cities in the country, we desperately need more policemen. During the Johnson administration there was an authorization for 4,100 policemen. President Nixon said we needed 5,100. I think we need more. I think we need more than 6,000. At the moment we have fewer than 3,500 on the streets. Though they give you a figure of 3,950, but 450 of these are in training. We have lagged terribly in recruiting policemen. The greatest deterrent to crime in the street is a visible policeman. And as long as these kids who are committing these crimes, and they are kids, 75 per cent of them are being committed by kids under 21, as long as the odds are five to one they won't be caught, as long as the odds are 14 to one they won't be caught when they go out and steal property worth $50 or more, as long as the odds are nine to one they won't be caught when they break into your house, they're going to keep committing these crimes.

MCCAFFREY. Pretty good odds.

WILLIAMS. Well, our talk about the fact that well, their decisions out of the old Warren Court were too liberal, were too soft on the criminal, but I think that this is really not addressing one's attention to the real problem. You wouldn't find one kid who gave one fleeting thought to his constitutional rights or criminal procedures before he went out in the streets to do his crime. They go out on the premise that they aren't going to be caught. And the record shows that they're pretty much right. The odds are overwhelmingly with them that they aren't going to be caught.

So, I say we desperately need more police. The record shows that when Chief Wilson saturated the third district with police in an experiment to see whether he could curb robbery, and burglary, and larcency, he reduced it tremendously. Now we've got to spend the money and saturate the city with police. But that isn't the end of the problem. There's still, I think, an equally bad problem. And it's a problem of which I, as a lawyer, am not proud. I think there has been a terrible breakdown in the criminal justice system of this country.

Now, we've already seen that the criminal justice system, the courts, are irrelevant to a large segment of the crimes that are being committed, because these crimes never get into court. But when they do get into court, a very bad thing takes place. The average lawyer today, if he exploits all the rights of his client, can keep his client at liberty on the street for from 18 months to two years after he commits an armed robbery.

MCCAFFREY. While they're working to pay him.

WILLIAMS. Well, 60 per cent of the people who are committing these crimes aren't able to pay a single dollar. They're indigent. And they're given free counsel, they're given the right to a free appeal, so naturally they all appeal. And the whole system stalls because even after the defendant is brought to trial, which may be several months after he's arrested and indicted, and even after he's convicted by a jury, it takes from six to eight to ten months before an opinion comes out of the appellate court affirming or reversing his conviction. And then there is an equal amount of time that is used up while the Supreme Court avenue is explored.

Now, if punishment really is to work, it doesn't have to be severe, but it has to be swift. You know from your experience with your own children, that if one of them deliberately spills the milk at the breakfast table, unless there is a quick meeting of his derriere with the front of your hand, there is not an understanding of the punishment. You can't wait for three days and then administer the punishment. The same thing is true at the level of society, unless punishment is administered swiftly, it does not have a deterrent effect.

So, I think we have to take a new look at our whole criminal justice system and speed it up if it is going to work effectively. We have to eliminate this delay of 18 months between the offense, and I'm giving the system the benefit of the doubt when I say 18 months because it's longer than that in many, many cases—we've got to eliminate that delay.

Third part of the system where there's been a terrible breakdown is in the prison system. Of course, the last thing that you can ever get the legislature to address itself to is the prison problem. It's the last item on national state priority. I can say this to you in all candor, in my 25 years of practicing law, I have met only one person whom I think was benefitted by a term in prison. The one person who was really rehabilitated. Unfortunately the prisons have become a breeding ground for crime. You put young boys in the prisons today and they come out hardened criminals. It's terrible; it's really terrible. The whole prison system needs a tremendous reformation. It's broken down.

So I say the system is broken down in three places. We don't have enough police, we don't pay them enough. We expect so much of them now. We expect our policemen to be professionals, we should treat them like professionals. We expect them to know the law.

We expect them to know first-aid. We expect them to be family counsellors. We expect them to be sociologists. We expect them to have the wisdom of Solomon and the patience of Job, the agility of a Jim Brown, and we give them $150 dollars a week and a gun. We've got to escalate our police force both quantitatively and qualitatively across this country. We can't do it with the money that's available to the cities because the people who can provide the funds from a tax basis are fleeing into the suburbs. The only way it can be done is from a massive subsidy from the federal government to the cities to correct this problem. I think this should be the number one priority in the cities because until we restore order in the cities, there is going to be no progress in education; there's going to be no progress health; there's going to be no progress in job opportunities, there is going to be no progress in any of those many things that are crying out for attention. We have to restore order. And we have cities out of control. One of them is ours.

A TRIPLE BREAKDOWN

Attorney Edward Bennett Williams has added his voice to those who blame the rising urban crime rate on a triple breakdown of our criminal justice system—at the police level, in the courts and in the corrections institutions. In a television interview, excerpts of which are printed elsewhere on this page, Mr. Williams sees the rising crime rate as the "number one priority in the cities," requiring massive federal funds because the migration of affluent white families to the nation's suburbs has so badly eroded the tax base of the cities. In general, Mr. Williams would seem to be endorsing the approach but not necessarily the specifics—of the President's program to cope with local crime by unclogging the criminal justice system, by reforming the courts and the prisons, and by increasing the police presence in the city.

On police manning, however, he has gone the President one better by calling for more than 6,000 uniformed policemen, an increase of 2,000 above the present level reached earlier this month toward an authorized total of 4,100, and 900 above the 5,100 figure set for the fiscal year starting July 1 (with overtime to be employed until the new figures are reached).

This newspaper has supported the announced program of two Presidents to increase the local police force and has supported such companion moves as those to strengthen the White House police force, the Capitol force, and the Park police and to add to the number of cadets and civilian employees of the Metropolitan Police Department. Manpower additions to these auxiliary components serve Mr. Williams' objective of getting more policemen on the streets since their presence makes possible the assignment of increasing numbers of metropolitan policemen to high-crime areas. The combined total of all these forces has been rising steadily in the past five years, from 3,960 in 1965 to about 6,100 today, with 8,229 the target for the next fiscal year.

Reaching this last figure will place a tremendous strain on the capability of the various forces; it is questionable whether even further increases should be considered until this is accomplished. Mr. Williams' main point that a policeman on the street can be a tremendous deterrent makes sense as long as he is trained, equipped and deployed to do the job, but that will take time. To date, the increases in the police force already authorized have not checked the rise in recorded crimes until the last few months.

Just to begin with, the budget increases calling for a total of 5,100 metropolitan policemen in uniform should be provided. The city government's attention should then turn to the job of converting this young and relatively green expanded force into an effective crime-fighting unit. Meanwhile, the local programs to reform the courts and improve the prisons must be pressed along with the attack on poverty and the other root causes of crime if any rollback in crime is to be a permanent one.

CONVENTION ESTABLISHING THE WORLD INTELLECTUAL PROPERTY ORGANIZATION AND PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY, AS REVISED

Mr. MANSFIELD. Mr. President, as in executive session, I ask for the yeas and nays on the treaty.

The yeas and nays were ordered.

Mr. MANSFIELD. Mr. President, I again suggest the absence of a quorum.

The PRESIDING OFFICER. The Clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION: CONVENTION ESTABLISHING THE WORLD INTELLECTUAL PROPERTY ORGANIZATION AND PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY, AS REVISED

The PRESIDING OFFICER. Under the previous order the Senate will now go into executive session to vote on the treaty, Executive A, 91st Congress, first session.

The question is, Will the Senate advise and consent to the resolution of ratification? The yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. KENNEDY. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Virginia (Mr. BYRD), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Connecticut (Mr. DODD), the Senator from Michigan (Mr. HART), the Senator from Iowa (Mr. HUGHES), the Senator from Hawaii (Mr. INOUYE), the Senator from Washington (Mr. JACKSON), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Montana (Mr. METCALF), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Rhode Island (Mr. PASTORE), and the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

I also announce that the Senator from Alaska (Mr. GRAVEL) is absent on official business.

I further announce that, if present and voting, the Senator from Iowa (Mr. HUGHES), the Senator from Washington (Mr. MAGNUSON), the Senator from Utah (Mr. MOSS), the Senator from Rhode Island (Mr. PASTORE), and the Senator from Washington (Mr. JACKSON) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOK), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senators from New York (Mr. GOODELL and Mr. JAVITS), the Senator from Oregon (Mr. PACKWOOD), the Senators from Illinois (Mr. PERCY and Mr. SMITH), the Senator from Vermont (Mr. PROUTY), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Ohio (Mr. SAXBE) is absent on official business.

If present and voting, the Senator from Kentucky (Mr. COOK), the Senator from Arizona (Mr. FANNIN), the Senators from New York (Mr. GOODELL and Mr. JAVITS), the Senator from South Dakota (Mr. MUNDT), the Senator from Oregon (Mr. PACKWOOD), the Senators from Illinois (Mr. PERCY and Mr. SMITH), and the Senator from Alaska (Mr. STEVENS) would each vote "yea."

The yeas and nays resulted—yeas 70, nays 0, as follows:

[No. 70 Ex.]

YEAS—70

Aiken	Fulbright	Nelson
Allen	Gore	Pearson
Allott	Griffin	Pell
Anderson	Gurney	Proxmire
Baker	Hansen	Randolph
Bellmon	Harris	Ribicoff
Bennett	Hartke	Russell
Bible	Hatfield	Schweiker
Boggs	Holland	Scott
Brooke	Hollings	Smith, Maine
Burdick	Hruska	Sparkman
Byrd, Va.	Jordan, N.C.	Spong
Cannon	Jordan, Idaho	Stennis
Case	Kennedy	Symington
Cooper	Mansfield	Talmadge
Cotton	Mathias	Thurmond
Curtis	McClellan	Tower
Dole	McGee	Tydings
Dominick	McGovern	Williams, N.J.
Eagleton	McIntyre	Williams, Del.
Eastland	Miller	Young, N. Dak.
Ellender	Mondale	Young, Ohio
Ervin	Murphy	
Fong	Muskie	

NAYS—0

NOT VOTING—30

Bayh	Hart	Moss
Byrd, Va.	Hughes	Mundt
Church	Inouye	Packwood
Cook	Jackson	Pastore
Cranston	Javits	Percy
Dodd	Long	Prouty
Fannin	Magnuson	Saxbe
Goldwater	McCarthy	Smith, Ill.
Goodell	Metcalf	Stevens
Gravel	Montoya	Yarborough

The PRESIDING OFFICER. Two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the unanimous-consent agreement, the Senate will now return to legislative session.

Mr. KENNEDY. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

DEPARTMENTS OF LABOR AND HEALTH, EDUCATION, AND WELFARE AND RELATED AGENCIES APPROPRIATIONS, 1970

The PRESIDING OFFICER. The Chair lays before the Senate the unfinished business, which the clerk will state.

The BILL CLERK. A bill (H.R. 15931) making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies, for the fiscal year ending June 30, 1970, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

The question is on agreeing to the amendment of the Senator from Maryland (Mr. MATHIAS).

Mr. STENNIS. Mr. President, for the information of the Senate, we have controlled time, as Senators know, from now on.

I do not know how many speeches there will be for each side, but the author of the amendment and I have conferred, and we do not anticipate any great long debate. This is an important matter, and it will be discussed fully, but I am of the impression now that we will be able to move along.

There are 2 hours to the side on the first amendment, but on account of the close relationship between the two, there will be 30 minutes to a side on the second amendment.

I yield 20 minutes to the Senator from Mississippi (Mr. EASTLAND).

Mr. EASTLAND. Mr. President, again today we find ourselves engaged in what has become a typical exercise in Washington—the approval of enormous sums of money to be expended, hopefully, to support the aspirations of our people and to afford advancement to America.

Many fiscal authorities—among them the President of the United States—have indicated that the legislation under consideration would appropriate funds in excess of that which is sound and prudent—which would, according to their statements, exert an adverse effect on our crucial battle against inflation.

Now, in these critical circumstances and in this time of maximum stress upon the economic stability of our Nation and the patience and spiritual strength of our people, it is necessary, as never before in our recent history, for the Congress to act with real wisdom in the allocation of public moneys.

Before this latest tidal wave of green washes across our land we must ascertain that these huge sums will help—not hurt—our citizenry and institutions.

The pending legislation deals directly with the keystone in the arch of progress for our people—the American educational establishment.

Ours is the most advanced, most productive, richest, and most powerful society that humanity has seen since the dawn of history. What were the key elements in the formula we have followed which allowed us—in the brief span of two centuries—to raise up on this continent a Nation which is a model for the world and a credit to mankind?

It was freedom—freedom to work and to worship—to learn—to choose—to fashion the best life attainable with individual initiative, imaginaton and courage.

It was an unfettered, free enterprise economic system that delivered to each man and woman the rewards they earned.

And, Mr. President, it was the unexcelled—indeed, the unmatched—American educational system which provided the genius that led our land to the pinnacle of world leadership and the heights of human achievement.

Our educational establishment reaches up to the great institutions of higher learning—not down from the colleges and universities to the lower scholastic levels. Therefore, the neighborhood school is the rock upon which our splendid structure was founded and upon which it must rest today and tomorrow.

The men who stood on the moon started toward that apparently unreachable goal as they walked up the steps of the school—as did the men and women in all walks of life who have made America the symbol of what liberty and learning bring within human capabilities.

I assert, Mr. President, that the school where the child begins the educational process is the key that opens the door to the future for every boy and girl. The elementary training given the youngster helps him or hampers him, develops or restricts his talents, affects him favorably or hobbles him through all the days of his life.

Mr. President, I am unable to convey in words the anxiety and sadness which almost overwhelms me as I am forced to report to the Senate that the concept of the neighborhood school faces the clear and present danger of complete destruction.

How could this terrible possibility have developed? Why would any people allow the death of a structure which brought them progress and prosperity, advancement and accomplishment?

This calamity came upon us when jurists sought to replace educators, when bureaucrats assumed the function of parents, when suicidal social theories were substituted for the sound principles that undergird the educational process.

The term "freedom" and the phrase "to choose" are among the most honored words in our language. This is as it should be. Those words are the heart—the blood and bone—of the American ideal.

On the other hand, the term "force" is offensive to any free man. The thought of a citizen who lives in liberty to be "forced" is contrary to our basic beliefs.

And yet, we have actually witnessed a complete reversal of the application of these terms in one of the most vital phases of our national existence—our school system.

The Supreme Court has announced that American parents are not free to choose schools for their own youngsters. These judges—far from this cruel problem and fallible, as are all men, have taken unto themselves the charting of the lives of millions of little children. In casually assuming the sweeping responsibility for the formation of the characters and the training of the minds of countless boys and girls these men have said, in effect, "A handful of us here in Washington are wiser than the combined intelligence of all American parents." That, Mr. President, is among the most ridiculous and insulting assumptions I have ever heard.

The tradition of the United States requires opposition to force. We wrested our freedom from a king who sought to force upon us that which was and is unacceptable to freedom-loving people. A quarter of a century ago we spilled our blood and poured out our treasure to eradicate force, Hitler-style, from the earth. Since then it has been the courage and the determination of the citizens of this country that has prevented communism from engulfing all men.

In spite of this tradition, and in the face of these sacrificial actions, we see the Court directing the forced bussing of boys and girls hither and yon to achieve what they style "racial balance." Imagine American children being hauled about like laboratory animals as a part of an experiment in social theorizing. I submit that we can achieve no balance in this fashion. We have, indeed, lost our balance entirely; and what stands in the shadow of collapse is not a foolish theory but the neighborhood school concept—an irreplaceable source of American strength.

In addition to the Nation's highest courts, our school structure is under attack from the vast bureaucracy in HEW. Here, Mr. President, is where we confront the pressing problem of the proper utilization of funds. Very simply stated, my question is: Shall these appointed officials be allowed to expend enormous sums of money to destroy our neighborhood school system, or will they be instructed by Congress to utilize the funds to support and advance the core of the situation—the education of American children?

I have on this floor, in the past, cited statistics which draw the startlingly clear picture of the disastrous effects of these decrees and policies in my own State. To illustrate the full scope of this tragedy, I am now informed that the public school system in Mississippi will lose many more than 50,000 students before the end of this term. I cannot emphasize strongly enough that this figure is not a line on a graph—not a part of a chart at HEW—not a numbers game for judges and Federal appointees. It represents 50,000 little children who are entitled to better treatment at the hands of their country. It also represents parents who are bearing a crushing burden—good men and women who do not deserve mistreatment from the Nation they have supported through the years.

I want the Members of the Senate and the people of the United States to be aware of exactly how far this unbalanced course of conduct can carry us.

The instance I shall describe defies understanding. In fact, it is beyond belief. Nevertheless, this incident occurred in this land of ours—this land where "freedom" and "to choose" are watchwords and where "force" has always been unconscionable and unacceptable.

Mr. President, news accounts of the last few weeks clearly illustrate the tragedy of what is being done to the system of education in this country.

I speak of the 14-year-old boy from Oklahoma City, whose parents were fined $1,000 and sentenced to 30 days in jail—

all because their son wanted to attend his neighborhood school.

Quite frankly, Mr. President, this is frightening to me, and it is frightening to all parents of school-age children. But, more than that, it should be frightening to all Americans who hold to those principles of freedom upon which this country was founded.

The Federal courts have now extended their jurisdiction into the very heart of America—into the home, into family life, into the rights of parents to rear and educate their children. It is a grave situation that is without parallel in our national history.

Mr. President, it saddens me—but, it is a stark and all too certain fact. We in America today live under the iron rule of a judicial dictatorship compounded by a misguided Federal bureaucracy.

Let me relate the story of young Raymond York, a student at Oklahoma City's Taft Junior High, who was told by the Federal courts he could no longer attend the school of his choice. The purpose of this high and mighty ruling was to achieve integration in Oklahoma City's schools by order of the Federal Government.

Raymond York has been arrested by a U.S. marshal, and his parents hauled into court where a Federal judge pronounced a jail sentence and a fine on them.

Mr. President, I have a deep admiration for this young man and his parents. They have refused to play the role of pawns on this judicial chessboard. They are standing up to be counted and to proclaim their rights. Fourteen-year-old Raymond York stands tall in my estimation, taller than those who would force him to attend school against his will, taller yet than those who would take away his basic and fundamental freedom of choosing where he will get an education.

It is indeed the height of absurdity—it is, in fact, a distinct danger to our basic rights—when this teenager is hauled into Federal court and now faces a jail term and a heavy fine—all because the U.S. Government has been blinded by its own social theories and lost sight of reason and commonsense in dealing with school problems. The shocking and saddening story is that this incident in Oklahoma City is not an isolated case, but it is a story that is being repeated all too frequently in every part of this country.

How long will this madness continue? When will we return to sanity and rightness?

How long will the American people tolerate this tyranny?

Mr President, I am here today to say "not much longer" the American patience wears thin.

As this wave of educational madness now spreads out of the southland and into the far reaches of this great Nation, I predict a rushing wave, a rising tide, a thundering storm of national indignation. I predict a great citizen revolt, a peaceful, but deadly determined and deeply dedicated citizenry, which will rise up and say "Enough!" Enough of this madness, this insanity, this absurdity.

Listen now to the words of Mrs. Yvonne York as her son is led away from the school of his choice in Oklahoma City. Listen as she says:

I'd like to scream, I'd like to cry.

This is the feeling of America today. It is a feeling of frantic frustration, a state of deep desperation. But, it is a feeling that will not long prevail in this country.

Soon Americans will rise out of this state of depression. They will throw off this feeling of frustration. They will sound the call of man throughout the ages, the summons to return to those great and basic principles of rightness and commonsense.

Freedom will be their watchword, liberty their battle cry. It will be a cry heard from every corner of this Nation—from the man on the farm to the man in the city, from the shopkeeper, the carpenter, and the man in the factory, from the majestic mountains of the Far West to the farmland and forests of the South and from the great skyscrapers of the East to the fertile plains of the Midwest. It will be a great voice of Americans who will rise and unite to save this country.

And this cry will be heard. It will be heard in these very Chambers, in the Highest Court of our land, in the White House, and in a thousand judges' chambers and city halls across America.

Today, we look out on a land besieged by an utter madness—an insanity unknown now in a history that stretches back over two glorious centuries. We see a crisis without parallel. We see a Federal judiciary mad with power, a bureaucracy out of touch with reality—a Government out of step with the people—a citizenry caught in a whirlwind of miscalculation and lost on a sea of educational insanity.

We see our children—the hope of our tomorrow, the dream of decades to come, the America of the future—now the object of a great and frightening social experiment. We see schoolbuildings lying vacant, great educational plants gathering dust and cobwebs. We see students uprooted from their classrooms and forced into unworkable and unthinkable situations. We see entire families fleeing from their homes and seeking a haven from this oppression. We see a vast disarray of educational plans and the clutter of conflict in our school districts. We see entire State educational systems—once the backbone of a growing economy and the thread of hope for a better day to dawn—now a crumbling wasteland of judicial and bureaucratic ruin.

All this—the aftermath of a ruthless judiciary and a thoughtless bureaucracy which has forced upon the American people the shackles of a doctrine of dictatorship—a doctrine not only unworkable, but one which strikes deeply at the very heart of those fundamental freedoms upon which this country was founded, a doctrine which invades the home and now crushes the last vestige of freedom reserved to a mother, a father, and their children.

Yes, my colleagues, a great cry will arise from the American people. It will be heard—it will be heard at the polling places, in the ballot boxes, at the courthouses, in the Halls of Congress—and, yes, it will be heard in the marbled buildings that house the bureaucracy and behind the great bar of justice.

It will be a call for commonsense, a shout of sanity, a chorus of rightness, a song of liberty, an anthem of freedom. The American people will speak—and they will speak in a loud and clear voice that will ring throughout the land.

My greatest fear—my only question, Mr President, will it be too late?

Mr. President, in order to restore sanity, fair play, and sound educational principles to the operation of the public school systems of this Nation, we must retain sections 408, 409 and 410 of H.R. 15931.

These are the so-called Whitten amendments and the Jonas amendment.

Section 408 provides, in essence, that no part of the funds appropriated may be used to force a school district to bus children, or abolish a school, or assign students to a school which is not the choice of his parent or parents.

Section 409 provides that no part of the funds may be used to force a school district to take any actions pertaining to the busing of students, the closing down or abolishing of a school, or the assignment of students to a school which is not the choice of his parent or parents as a condition precedent to receiving Federal funds.

Section 410 provides that no funds shall be used to deny a student, or his parent or parents, the right to attend the school of his or his parents' choice.

Unless these provisions are kept in the bill, we may be certain that officials of HEW will continue to misuse Federal funds and misinterpret Federal law by forcing the busing of students, the abolishment of schools, and the destruction of free choice in attending schools.

The PRESIDING OFFICER. The time of the Senator from Mississippi has expired.

Mr. STENNIS. Mr. President, I yield 2 additional minutes to my colleague from Mississippi.

The PRESIDING OFFICER. The Senator from Mississippi is recognized for 2 minutes.

Mr. EASTLAND. Mr. President, the Congress has the duty and responsibility to write these clear and explicit provisions into the law so that even HEW officials may be able to understand what they should and should not do.

They should be made to understand that education comes first, and that they have no right or authority to incorporate their extreme notions of educational and sociological philosophy into the law.

Mr. President—I plead for parents and children—for American men and women and boys and girls.

I call on the Senate to say to the Court and to the HEW appointees that the day of the punishment of youngsters and the harassing of mothers and fathers is past—that fairness and equity will prevail across our Nation—that education is restored to its rightful primary position in our society.

I urge the adoption of the Whitten and Jonas amendments, and a defeat of the present amendment.

Mr. MATHIAS. Mr. President, I yield 10 minutes to the distinguished Senator from New Jersey (Mr. CASE).

The PRESIDING OFFICER (Mr. SPONG in the chair). The Senator from New Jersey is recognized for 10 minutes.

Mr. CASE. Mr. President, before I address myself to the particular matter which I should like to bring out at this point in the discussion, I want to say how much we are all indebted to the distinguished Senator from Maryland (Mr. MATHIAS) for bringing this matter again before us in a way which, I am sure, a great majority of the Members of this body are going to approve.

This is an old record. We play it every year—maybe two or three times a year. It is a little bit cracked now. It does seem to provide, in a wry kind of way still, some benefit to some people. I do not know why.

I do know this, that as he has been in the past, the President of the United States is strongly opposed to the section which the Senator from Maryland would amend and is strongly in favor of the amendment.

Those of us who believe we should support the President of the United States on every occasion in which we can, find that it is just as much if not more important to support him on matters relating to human rights, and deep human needs—that is, human decency, such as are involved here, as it is to matters pertaining to dollars and cents.

I therefore suggest to my colleagues, particularly of the President's party—my party—that we give heed to the President's admonition in regard to the matter of this amendment, and the next amendment that will be offered in relation to section 409 by the Senator from Maryland, and an amendment which I understand will be offered by the minority leader, the Senator from Pennsylvania (Mr. SCOTT) to strike section 410.

All of these are matters in which the President of the United States, throughout his experience in public life, has been deeply interested. When he sat as Vice President of the United States, presiding over this body, he made historic rulings which advanced us immeasurably toward progress in the civil rights field so far as legislation was concerned. He has not changed. His prestige is on the line just as surely, if not more surely, and in a real sense more significantly, than it was on the amendment offered by the Senator from New Hampshire (Mr. COTTON) on yesterday.

If we have to balance on the scales the questions involving racial relations and human decency against those involving dollars and cents, I suggest that the balance is clearly on the side of the amendments of the sort we are dealing with today, not only so far as the President's prestige and leadership are concerned, but also on the matter of substance, the matter of the rightness of the thing, and the matter of civil peace with justice in this land of ours.

Now, Mr. President, I should like briefly to turn to a particular phase of the aspect about which much confusion has been created, and I think not without intention, because certainly it is something about which there should be no confusion at all—it is purely a question of fact.

There have been charges that those who live in the northern part of this country are guilty of hypocrisy. There have been implications that those outside of the South are trying to force the South to bus children to schools while trying to avoid the same treatment for children elsewhere in the country. And there have been attempts to show that those who are resisting school desegregation in the South are only trying to avoid unnecessary busing of children to schools.

It is time to look at the facts.

And the facts show that there has been more busing of pupils in the South to maintain segregated schools than there has been to desegregate them.

These facts are contained in figures showing the percentage of children in the South who were bused to their schools before plans to desegregate those schools were put into effect.

At my request, these figures were provided to me by the Department of Health, Education, and Welfare for all school districts in which the Department helped to work out desegregation plans since last July.

While the Department was unable to provide figures for the amount of busing in these districts after the desegregation plans were put into effect, I was assured that it decreased, or at least did not increase, in virtually every case.

And I think most Members of the Senate will be surprised, as I was, by the amount of busing which had been used by these school districts in order to transport pupils to illegally segregated schools.

Mr. MONDALE. Mr. President, will the Senator from New Jersey yield?

Mr. CASE. I am happy to yield to the Senator from Minnesota.

Mr. MONDALE. Throughout these debates, one of the constant efforts made by those who believe the Supreme Court decision should be overturned has been to place us on the defensive on this very issue; namely, the busing issue. But, in fact, the biggest busing requirement arises when we seek to sort children out on the basis of color, wherever they might live, to send them to schools which are all black and to schools which are all white. As the Senator may be aware, in Green against New Kent County, which was decided by the Supreme Court in 1968, the facts show that they took black children from one end of New Kent County to the other end of the county to a black school, and took white children who lived next to the black school and bused them to the other end of the county to an all-white school.

I think it is obvious and logical that if we bus children on the basis of geography, rather than on the basis of color, we will have less busing.

It seems to me that if one is against the burdens of busing, he ought to be for the Mathias amendment.

Last year, in 300 voluntary desegregation plans accepted by HEW in which busing was involved, less than 10 involved additional busing of children, and most resulted in less busing. So, if one is against burdensome busing, he should support the Mathias amendment.

Mr. CASE. Mr. President, I thank the Senator for the very helpful position he has stated. He, as the phrase goes, took the words right out of my mouth.

I am glad to have him cooperate in the position I state here. He is absolutely right.

Mr. MONDALE. Mr. President, I have one other case that I should like to refer to.

Mr. CASE. I have a half dozen. I yield to the Senator.

Mr. MONDALE. Mr. President, in a county in Georgia black schoolchildren were bused 75 miles to attend an all-black school. Again, in a county in Mississippi, black children are bused 90 miles to a school that is all black.

I gather the Senator has cases like these, but I think this pattern is well established.

Mr. CASE. I am very much obliged for the helpful position made by my friend, the Senator from Minnesota. If he has any other thoughts during my brief remarks, I hope that he will not hesitate to give us the benefit of them.

As I have said, the figures just cited by the Senator from Minnesota and those that I have already given show clearly that we are not faced with a question of whether we oppose busing of pupils to their schools.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MATHIAS. Mr. President, I yield an additional 5 minutes to the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 5 minutes.

Mr. CASE. Mr. President, I have figures to show the extent to which southern school districts used busing to maintain segregated schools. I will insert a full list later. However, let me cite a few examples at this point.

In order to maintain its segregated schools, Neshoba County, Miss., bused all of its pupils to their classrooms before the Department of Health, Education, and Welfare worked out a plan to desegregate the schools in that county.

Elsewhere in Mississippi, the predesegregation busing rates included 97 percent in Franklin County and Enterprise County, 99 percent in Lauderdale County, 96 percent in Marion County, 95 percent in Kemper County, 94 percent in North Pike Consolidated School District, and 92 percent in Yazoo County. In 13 other Mississippi school districts, more than two-thirds of the pupils were bused to their schools before the desegregation plan was put into effect.

In Louisiana, 99 percent of the pupil population of West Baton Rouge Parish rode buses to school before a desegregation plan was put into effect and the same was true for 98 percent of the pupils in West Feliciana Parish.

Elsewhere in Louisiana, the rates were 92 percent in Ascension Parish, 88 percent in Red River Parish, 87 percent in Franklin Parish, and 80 percent in Sabine Parish.

In order to maintain its segregated

schools, Marengo County, Ala., bused 91 percent of the county's pupils to schools.

Elsewhere in Alabama the percentages were 78 percent for Sumter County, 76 percent in Pickens County, 75 percent in Russell County, and 70 percent in Bullock County.

In Georgia, 95 percent of the pupils in Webster County were bused to their schools while in Decatur County the figure was 59 percent.

In North Carolina, 98 percent of the pupils in Currituck County rode buses to school while 65 percent of the pupils in the Elizabeth City-Pasquotank School District did likewise.

All pupils in Atlanta County, Tex., rode buses to school before the Federal Government's desegregation plan was initiated there.

In Virginia, 98 percent of the pupils in Northampton County and 91 percent of those in Accomack County were bused to school before the Federal Government helped the district work out desegregation plans.

It should be emphasized that these figures are based on reports filed by the school districts themselves in all cases in which the Department of Health, Education, and Welfare helped to work out a school desegregation plan since last July. These are cases in which the orders to desegregate came from the courts or from the administrative branch of government and the Department assisted the local district in working out an acceptable desegregation plan.

The figures I have cited show clearly that we are faced with only one question. That question is whether we are going to tie the hands of the Federal Government so that it cannot effectively require desegregation of illegal dual school systems.

In my view, there can be no greater hypocrisy than to allow this to happen.

Mr. President, I ask unanimous consent that the tables I have referred to in my remarks be printed in the RECORD at this point.

There being no objection, the tables were ordered to be printed in the RECORD, as follows:

District	Enrollment by race			Number of pupils bused (white and black)	Percent of pupils bused
	White	Black	Total		
ALABAMA					
Bessemer [1]	3,027	4,509	7,536	375	5
Mobile	43,992	31,429	75,421	16,973	23
Anniston City	2,084	1,729	3,813	[2]	[2]
Marengo County	736	2,970	3,706	3,374	91
Phenix City	3,368	2,655	6,023	0	0
Pickens County	2,567	312	5,579	4,247	76
Russell County	1,410	3,615	5,025	3,793	75
Sumter County	764	4,096	4,860	3,786	78
Tuscaloosa City	7,473	5,425	12,898	190	1
Bullock County	933	2,613	3,546	2,465	70
Birmingham	31,252	34,922	66,174	[2]	[2]
GEORGIA					
Richmond County	23,676	13,813	37,489	10,055	27
Augusta	[2]	[2]	[2]	[2]	[2]
Fulton	[2]	[2]	[2]	[2]	[2]
Webster	132	531	663	631	95
Crisp County	2,391	2,393	4,784	2,200	46
Dougherty County	13,975	8,529	22,504	7,750	34
Decatur	2,927	2,958	5,885	3,446	59
LOUISIANA					
Acadia Parish	8,930	2,694	11,624	6,624	57
Ascension Parish	6,152	3,144	9,296	8,531	92
Avoyelles Parish	6,196	3,465	9,661	7,220	75
Bienville Parish	1,890	2,496	4,386	3,115	71
Caddo Parish	33,320	26,035	59,335	15,818	27
Calcasieu Parish	28,627	9,738	38,365	16,261	42
Concordia Parish	3,826	3,232	7,058	4,753	67
DeSoto Parish	2,458	3,761	6,219	4,871	78
East Carroll Parish	1,466	2,497	3,963	[2]	[2]
East Feliciana Parish	1,429	2,985	4,414	3,586	81
Evangeline Parish	5,601	3,280	8,881	6,172	69
Grant Parish	2,788	1,154	3,942	2,919	74
Iberia Parish	9,863	4,923	14,786	8,625	58
Jackson Parish	2,278	1,580	3,858	2,660	69
Jefferson-Davis	5,744	2,182	7,926	1,978(?)	25
Lafayette Parish	20,102	6,561	26,663	17,236	65
Lincoln Parish	3,317	3,095	6,412	[2]	[2]
Livingston Parish	8,259	1,530	9,789	7,325	75
Madison Parish	1,306	3,326	4,632	2,006	43
Morehouse Parish	4,439	4,999	9,438	4,574	48
Natchitoches Parish	4,338	4,336	8,674	6,974	80
Pointe Coupee Parish	2,358	3,636	5,994	4,710	79
Ouachita Parish	13,591	5,055	18,646	11,965	64
Rapides Parish	18,742	9,606	28,348	16,685	59
Red River Parish	1,207	1,263	2,470	2,172	88
Richland Parish	3,295	3,373	6,668	5,320	80
Sabine Parish	3,037	1,434	4,471	3,796	85
St. Helena Parish	1,070	1,961	3,031	2,301	76
St. Landry Parish	11,659	11,035	22,694	14,214	63
St. Martin Parish	5,138	3,652	8,790	5,825	66
St. Mary Parish	3,114	3,806	6,920	4,832	70
Tensas Parish	1,097	2,123	3,220	2,023	63
Union Parish	2,587	2,069	4,656	2,802	60
Vermilion Parish	8,137	1,674	9,811	7,771	79
Webster Parish	6,552	3,972	10,524	5,265	50
West Baton Rouge	2,327	2,375	4,702	4,669	99
West Carroll	2,727	1,017	3,744	2,299	61
West Feliciana	719	1,723	2,442	2,381	98
Winn Parish	2,477	1,545	4,022	2,434	61
City of Monroe	5,766	5,224	10,990	3,569	32
St. John Baptist	2,356	2,379	4,735	3,781	80
Iberville Parish	2,816	4,998	7,814	[3]	[3]
Franklin Parish	4,067	3,325	7,392	6,460	87
MISSISSIPPI					
Amite County	1,461	2,582	4,043	3,397	84
Anguilla Line	214	714	928	[2]	[2]
Canton Municipal	1,326	3,672	4,998	1,652	33
Columbia City	1,538	896	2,434	677	28
Covington	1,998	1,629	3,627	2,873	79
Forrest	4,195	1,062	5,257	3,883	74
Franklin County	1,094	1,075	2,169	2,094	97
Hinds County	6,438	7,489	13,927	9,151	66
Holmes County	913	5,355	6,268	4,760	76
Kemper County	793	2,060	2,853	2,707	95
Lauderdale	3,063	1,858	4,921	4,897	99
Lawrence	1,942	1,277	3,219	2,780	86
Leake	2,088	2,224	4,312	3,447	80
Lincoln	1,671	1,018	2,689	2,391	89
Madison	1,238	3,376	4,614	3,655	79
Marion	2,064	1,564	3,628	3,485	96
Meridian	6,368	4,425	10,793	522	5
Natchez-Adams	4,494	5,927	10,421	5,635	54
Neshoba County	2,045	877	2,922	2,922	100
North Pike Consolidated	697	605	1,302	1,223	94
Noxubee	872	3,573	4,445	3,942	89
Philadelphia City	958	548	1,517	402	26
Sharkey-Issaquena	630	2,002	2,632	[2]	[2]
South Pike	1,135	2,156	3,291	993	30
Wilkinson	779	2,757	3,536	3,060	87
Holly Bluff	240	482	723	626	87
Yazoo City	2,014	2,089	4,103	1,009	25
Yazoo County	1,071	2,495	3,566	3,297	92
Enterprise	405	363	768	743	97
Quitman	1,656	1,490	3,146	2,548	81
NORTH CAROLINA					
Statesville City	3,376	1,302	4,678	0	0
Kinston City	3,214	3,303	6,517	0	0
Elizabeth City/Pasquotank	3,488	2,850	6,338	4,088	65
Tarboro City	2,237	1,592	3,829	1,225	32
Currituck County	1,010	610	1,620	1,591	98
Wilson City	4,323	3,776	8,099	972	12
TEXAS					
Hutchins	1,630	[4] 2,726	[5] 4,504	1,319	29
Tyler	10,660	[6] 4,646	[7] 15,426	3,379	22
Atlanta	1,338	869	2,207	2,207	100
Pittsburg	1,170	881	2,051	1,021	50
VIRGINIA					
Northampton County	1,313	2,505	3,818	3,742	98
Accomack County	3,198	3,448	6,646	6,049	91

[1] Possibly a 6-percent error in figures for this district.
[2] Data not available.
[3] Data missing from file.
[4] Of that number 142 are Mexican-Americans.
[5] Of that number 6 are Indians.
[6] Of that number 102 are Mexican-Americans.
[7] Others, 18.

Mr. STENNIS. Mr. President, I yield 10 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 10 minutes.

Mr. SPARKMAN. Mr. President, I am happy to say that the inherent sense of fair play which has always characterized the American people has finally begun to surface, as it relates to the double standard applied by the Federal Government in desegregation matters. Furthermore, at long last, it is becoming increasingly recognized by sincere, responsible people across these United States that the effort by the Federal Government to force desegregation in the public schools is a dismal failure.

My primary concern in this matter, Mr. President, is for the public school system in my State and throughout the

country. Public education has been fundamental to the growth and progress of America. Where would we be today without it? What would be our posture in the world today without public education? How could we ever have kept pace with the other nations of the world in the technologies that have brought such great progress in all facets of our life, had there been no public school system in America? What might be our defense posture? What about the space race?

My concern, Mr. President, is for the future of our educational system. I read somewhere recently that three-fourths of all the knowledge in the world today has been learned in the last 50 years. Those figures may not be precisely correct, but if we determine the correct ones, I know that they are equally astounding. That is why it is with education with knowledge, with progress. It pyramids. There was a time when a nation could lag behind technologically for 20, 50, or even a hundred years without being permanently out of the ball game. In today's fast-moving technology, I wonder if a nation could ever recover from a 5-year technological gap.

I say to the Presiding Officer and to my colleagues in the Senate that we are in danger of so impairing our system of public education in this country as to run the risk of permanently crippling our Nation. And we are running that risk by the stubborn refusal of some to recognize the dismal failure of certain unreasonable and unworkable programs grafted upon the social experiment begun in 1954.

Some may say that the experiment has failed because the South has been recalcitrant. But look at the facts. The most graphic examples of failures are in those areas of the country outside the South.

The reason, Mr. President, that forced desegregation of the public schools has failed is really a very simple one. The people—both black and white—do not want it. The most unpopular tool being used by the Federal Government to achieve forced desegregation is the busing of students. The Whitten amendment merely seeks to accomplish what everyone knows is the will of a majority of American citizens—both black and white—and that is to prohibit the use of these funds for the busing of children.

I have heard the arguments used against the amendment to the effect that it is unconstitutional, since the Supreme Court has ruled that busing in cases of so-called de jure segregation is all right. These arguments are not valid. The Whitten amendment places a restriction upon the use of the funds appropriated by this bill that is within the constitutional authority of the legislative branch of Government.

Mr. President, the Senate recently adopted the amendment offered by the distinguished Senator from Mississippi (Mr. STENNIS), that calls for a single standard to be applied by the Federal Government in its desegregation effort. If that standard is permitted to include the use of busing children from one school district to another, the system of public education as we know it will not survive; and that is something that I know concerns every Member of this body. I urge my colleagues to look at what has happened in areas where busing has been tried. It was a failure in Denver, Colo. Indeed, it brought about the defeat of members of the school board there who supported it, and I am told that the vote against these board members in nonwhite precincts of Denver was 4 to 1. The dynamiting of school buses in Denver is merely an example of just how unpopular this matter is. It can be totally disruptive of the educational process.

It has been prohibited by State law in New York. I urge my colleagues to join together now to prohibit busing throughout the United States. Let us not wait until the damage is done. Let us not run the risk of impairing our system of public education.

The Senate voted in December of last year to add the words "except as required by the Constitution" to the prohibitions provided in the Whitten amendment. The purpose of those who supported adding those words was to permit the Department of Health, Education, and Welfare to continue requiring busing in the South, but to let the prohibition be effective in other areas of the country. Since that time, the Senate has called for the application of a single standard by HEW in North and South through the adoption of the amendment offered by the distinguished Senator from Mississippi to the HEW authorization bill. I was privileged to cosponsor the Stennis amendment, and I was gratified when the Senate adopted it.

I call upon the Senate, Mr. President, to remain consistent in the expression of its will, and to keep as a part of this bill the Whitten amendment as reported by the committee.

The Whitten amendment, coupled with the Jonas amendment, if contained in the legislation and made a part of the law, and if respected as part of the law will help stabilize the school situation all over the United States and help us to get back to the normal operations that are required if we are to maintain quality education in the country.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I yield 20 minutes to the Senator from North Carolina.

Mr. ERVIN. Mr. President, I rise in opposition to the gumshoeing, pussyfooting, fence-straddling, and issue-dodging amendment now before the Senate. The amendment states, "except as required by the Constitution."

The amendment calls on Senators to say we are good legislators, if it is constitutional; that we will have compassion on little children, if it is constitutional; that we will let little children attend neighborhood schools, if it is constitutional; that we will forbid busing, if it is constitutional; and that we wll let parents have freedom of choice in selecting schools for ther children, if it is constitutional. That is what the amendment says.

I think it would be very unfortunate for the Senate, if it has any desire to have a good image in the minds and hearts of American people, to agree to this amendment proposed by the Senator from Maryland. Why do I say that? Of course, I know that all Senators on all occasions are actuated by the purest of motives. I know the author of this amendment has no desire to get votes from people who are against busing. I know that he has no desire to give them a camouflage front which would salve their consciences into voting to let Mr. Finch or one of his underlings pass on a constitutional question which the amendment does not permit the Senate to pass on.

Why do they not put this provision in another section of the bill? This is a long bill. Why do they not put a provision in the bill that section 404 is going to take effect if it is constitutional? Why do they not say they are going to pay certain salaries set out in the bill if it is constitutional? No. Despite the motives which prompted this amendment, this amendment is, in substance, just as I said: A pussyfooting, gumshoeing, fence-straddling, and issue-dodging amendment.

I wish to give the reason why I believe the passage of this amendment will give the Senate a poor image in the minds and hearts of the American people. It is based in part on article VI of the Constitution.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield for a question?

Mr. ERVIN. I yield.

Mr. BYRD of West Virginia. I wish to ask the Senator from North Carolina this question. Is there not a presumption of constitutionality with respect to every jot and title of every bill that comes before us?

Mr. ERVIN. Absolutely.

Mr. BYRD of West Virginia. I wish to ask the Senator a second question. Is there not a presumption that administrators and various agency department heads, and so forth, will not act except in accordance with the Constitution?

Mr. ERVIN. There is a presumption to that effect, but the actions of HEW in violating three acts of Congress indicated that they thought these acts do not apply to them.

Mr. BYRD of West Virginia. Yes. Why provide in the bill "except as required by the Constitution"? Is there not a presumption that the agents of the Government are going to act in accordance with the Constitution?

Mr. ERVIN. That is the reason I say this is an issue-dodging amendment; because the duty to pass on constitutionality in the first instance rests on Congress; and if a Senator believes the Constitution requires busing he should vote to strike out this section, not nullify it by an issue-dodging amendment.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield for another question?

Mr. ERVIN. I yield.

Mr. BYRD of West Virginia. Does the Senator believe that it is necessary that we write words into a piece of legislation stating as follows: Except when it is required by the Constitution? Is there not a presumption that the Constitution is

going to govern the actions of those who administer the law?

Mr. ERVIN. It should. It certainly should. There is a presumption to that effect, although that presumption has been very effectively rebutted by HEW in its violation of three acts of Congress.

Mr. BYRD of West Virginia. Let me ask another question. Is it possible for Congress to pass a law that will contravene the Constitution?

Mr. ERVIN. Congress can pass a law that will contravene the Constitution, but it is no law after it passed. It is null and void. If it were contrary to the Constitution, it would be null and void. Of course, it is not contrary to the Constitution, because the Constitution gives the power of the purse to the Congress, and there is nothing in the Constitution that requires the Congress to appropriate money for any particular purpose, even though it is a constitutional purpose, or one sanctioned by the Constitution, or one required by the Constitution.

Mr. BYRD of West Virginia. I misspoke in using the word "contravene." While Congress may pass a law that may contravene the Constitution, is it possible for Congress to pass a law that would of itself amend the Constitution?

Mr. ERVIN. No. While not so designed by the Senator, this is a buckpassing amendment. It says, "Mr. Finch, you decide whether this shall be done, whether this is constitutional."

Mr. BYRD of West Virginia. Will the Senator yield for a further question?

Mr. ERVIN. Yes.

Mr. BYRD of West Virginia. Does not the amendment on its face give the appearance of its being put into the bill for the purpose of preventing section 408 from amending the Constitution? In other words, some Senators would apparently have us believe that without this amendment section 408 would have the effect of amending the Constitution, which in fact is not within the realm of possibility.

Mr. ERVIN. I agree with the Senator from West Virginia.

I started to say why this buckpassing amendment will create a bad image of the Senate in the minds and hearts of Americans. This amendment says, "We are in favor of these things if they are constitutional." That is what it says.

Article VI of the Constitution says:

> The Senators and Representatives before mentioned . . . shall be bound by oath or affirmation, to support this Constitution . . .

When it says "the Senators and Representatives before mentioned," it is talking about the Members of this body; and since we are sworn to support the Constitution, we are supposed to know what the Constitution is and what it means.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield further?

Mr. ERVIN. Yes.

Mr. BYRD of West Virginia. If this amendment is written into the bill, is it not correct to presume that the same people who have been interpreting the Constitution in HEW will continue to interpret the constitutionality after the passage of this law?

Mr. ERVIN. This amendment means that the Senate is unwilling to take a stand on the Constitution. They want Mr. Finch to decide what the Constitution means, or one of his underlings.

Mr. BYRD of West Virginia. In other words, the people who would interpret the words "except when required by the Constitution," would be the people at HEW who have been misconstruing the Constitution and the 1964 Civil Rights Act all along the way. Would not that be something like putting the fox over the guarding of the chickens?

Mr. ERVIN. There is no question about that. This body and the House, acting jointly, have said three times to HEW that they shall not bus children to achieve racial balance or to correct racial imbalance. Three times we have said that, and they have paid no attention to us—none whatever.

As I stated yesterday, Mr. Finch is an appointee of the President. As a member of the executive branch of the Government, he is subject to the orders of the President.

I was very much intrigued by the statement of the Senator from New Jersey about President Nixon's position on this matter. The statement he made, I think, is exactly opposite everything Mr. Nixon has ever said on the subject of which I have any knowledge. When he was seeking the votes of the people of my State, he held a press conference or granted a TV interview in the city of Charlotte, where the court had just handed down a court order that 23,000 children, according to the Charlotte News, had to be bused away from their homes.

That is the difference between the old busing and forced busing. In the old busing they bused children to schools, but in the new class of busing, they bus them away from their neighborhood school to another school. In the old days they bused them to enlighten their minds. Now they bus them merely to integrate their bodies.

Mr. MATHIAS. Mr. President, will the Senator yield?

Mr. ERVIN. Yes.

Mr. MATHIAS. The Senator has called into question the accuracy of the statement made by the distinguished Senator from New Jersey with reference to the President's position in this matter. I read into the RECORD yesterday the statement of the administration position——

Mr. ERVIN. The Senator, as I recall, read the statement of Secretary Finch, not the statement of President Nixon.

Mr. MATHIAS. Speaking for the administration, at the direction of the President.

So that this matter can be made crystal clear, I will offer for the RECORD the entire letter of Secretary Finch, which contains the administration comment on this legislation. The letter is dated February 20, 1970. I ask unanimous consent that it be included in the RECORD.

Mr. ERVIN. Mr. President, I have no objection to the request of the Senator, but I ask that the insertion be made after the conclusion of my remarks.

Mr. MATHIAS. I apologize to the Senator. I am entirely agreeable to putting it in then.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. ERVIN. Mr. Nixon sent down a statement from the White House in which he said he was opposed to busing to achieve racial balance or to correct racial imbalance.

I would say that we will keep giving not only the Senate but the administration a bad image on the part of the American people if we do not watch out, becaue it would appear that Mr. Finch is working one side of the street and the President the other side.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. ERVIN. Yes.

Mr. ALLEN. I would like to ask the distinguished Senator, with respect to Scott amendment 2—I will call it Scott 2 because the Senator offered one in December to HEW and one in February—to the Stennis amendment, if it is not correct that the administration, on 3 separate days took three separate and distinct positions with respect to the Stennis amendment and the Scott amendment thereto?

Mr. ERVIN. Well, I will have to say that the statements which were attributed to the different members of the administration at that time with respect to their position reminded me of the daring young man on the flying trapeze who took one position and then a countering position with the greatest of ease.

Mr. ALLEN. So is it not possible that if we do have here a letter dated February 20, purporting to be from Secretary Finch, it could have been changed three or four times, and that at this time the administration's position might be diametrically opposed to the purport of the letter?

Mr. ERVIN. That is quite possible. I do not attribute that to President Nixon. I think President Nixon is an honorable gentleman. When he went to Charlotte, N.C., to appeal for the votes of the people of North Carolina, he told them that he was against busing to change the racial balance in schools. He told them that he was in favor of allowing children to attend their neighborhood schools.

A majority of the people of my State believed President Nixon on that subject because they had been harassed from pillar to post on this matter. They gave him North Carolina's electoral vote. President Nixon never would have been elected President of the United States if he had not got the vote of people in the Southern States who were tired of being harassed largely, up to that time, by top members of the Democratic hierarchy.

Mr. ALLEN. I ask the Senator from North Carolina the further question whether he has seen or so much as heard of a letter from the President himself taking a position with respect to the amendment under consideration.

Mr. ERVIN. No; and the distinguished junior Senator from Mississippi (Mr. STENNIS) served notice on the opening day of the debate on his amendment

that he would take with many grains of salt any statement from any member of the administration who opposed the administration on that amendment, unless it came directly from the White House, or unless the President made a statement.

Mr. ALLEN. I should like to ask the Senator from North Carolina further, then, whether the amendment under consideration, offered by the distinguished Senator from Maryland (Mr. MATHIAS), would not be in direct opposition to the meaning of the Stennis amendment, which the Senate adopted only last week.

Mr. ERVIN. Oh, yes; it is an attempt to continue the same old runaround—to chastise the South and to let the North go free.

Mr. ALLEN. I thank the distinguished Senator from North Carolina.

Mr. ERVIN. Mr. President, on the question of racial segregation, I have seen more segregation based on race in 3 hours in the city of New York than I have seen in North Carolina in the 73 years I have been living.

When they started busing children up there to accomplish what is called desegregation of schools, the legislature of New York, by virtually a 2-to-1 majority, passed a law to prohibit it. A similar law was passed in Georgia the other day, and 15 minutes later they had a case in court to have it declared invalid. But that New York statute has been on the statute books for a year or more, and nobody has challenged its validity.

I wish to make two points to show why agreeing to this issue-dodging and buckpassing amendment would give the Senate a bad image in the eyes of the American people.

The first is that Senators of the United States are supposed to know something about the Constitution. If they know nothing about the Constitution, they cannot possibly keep their oath to support the Constitution. So, if this amendment is adopted, it will rightly engender, not in my mind, but in the minds of the American people, the inference that the Senate confesses that it is ignorant as to what the Consitution of the United States requires on this point.

The public may draw that inference, but I fear that it may also draw a different inference.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. ERVIN. Will the Senator from Mississippi yield me 3 more minutes?

Mr. STENNIS. Yes; I yield the Senator 5 additional minutes, Mr. President.

Mr. ERVIN. Of course, I know that all Senators are bold and courageous men, that they are willing to face issues. But I know Senators better than the people of the United States know them collectively; and if this amendment is adopted, I fear that the American people are going to draw an inference, either that Senators are ignorant of what the Constitution has to say on this point, or that they have not got the fortitude to stand up and face the issue which is dividing the American people more than any other issue confronting this Nation.

I call attention to an article published in the Wall Street Journal on February 26, 1970, written by Vermont Royster, and entitled "Forced Integration: Suffer the Children," in which it is pointed out that the Federal Government would not dare to drag adults around the way it is dragging little children hither and yon; that while everyone has a right to go into a public swimming pool, the Government would not dare to go out and round up black and white people and make them go swimming in the same pool together, if they were adults.

The article continues:

The essence of that program is that we have tried to apply to our schools the methods we would not dream of applying to other parts of society. We have forced the children to move.

There are many things wrong with the forcible transfer of children from school to school to obtain the "proper" racial mix. It is, for one thing, wasteful of time, energy and money that could be better applied to making all schools better.

To this practical objection there is also the fact that in concept it is arrogant. The unspoken idea it rests upon is that black children will somehow gain from putting their black skins near to white skins. This is the reverse coin of the worst segregationist's idea that somehow the white children will suffer from putting their white skins near to black skins.

Both are insolent assertions of white superiority. Both spring from the same bitter seed.

Still, the practical difficulties might be surmounted. The implied arrogance might be overlooked, on the grounds that the alleged superiority is not racial but cultural; or that, further, both whites and blacks will gain from mutual association. That still leaves the moral question.

Perhaps it should be restated. Is it moral for society to apply to children the force which, if it were applied to adults, men would know immoral? What charity, what compassion, what morality is there in forcing a child as we would not force his father?

Mr. President, I am going to exercise compassion for the little children, black and white. I am going to vote against this amendment.

I call particular attention of the Senate to the opening paragraph of this article. It quotes the words of Stewart Alsop in Newsweek:

"Surely it is time to face up to a fact that can no longer be hidden from view. The attempt to integrate this country's schools is a tragic failure."

The words of Stewart Alsop in Newsweek will serve as well as any. They are startling, honest and deeply true. Whatever anyone else says otherwise, however shocked we may be, we know he is right.

I ask unanimous consent that the article from the Wall Street Journal to which I have referred be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Feb. 26, 1970]

FORCED INTEGRATION: SUFFER THE CHILDREN

(By Vermont Royster)

"Surely it is time to face up to a fact that can no longer be hidden from view. The attempt to integrate this country's schools is a tragic failure."

The words of Stewart Alsop in Newsweek will serve as well as any. They are startling, honest and deeply true. Whatever anyone else says otherwise, however shocked we may be, we know he is right.

The proof lies in the fact that Congress, in a confused sort of way, has made it clear that it no longer thinks forced integration is the way to El Dorado. Since Congress is a political body, that in itself might be evidence enough. But Mr. Alsop has also put the statement up for challenge to a wide range of civil rights leaders, black and white, ranging from Education Commissioner James Allen to black militant Julius Hobson, and found none to deny it. Beyond that, we have only to look around ourselves, at both our white and our black neighbors, to know that the failure is there.

But that only plunges us into deeper questions. Why is it a failure? And why is it tragic? Why is it that something on which so many men of good will put their faith has at last come to this? Where did we go wrong?

And those questions plunge us yet deeper. For to answer them we must go back to the beginning. It is the moment for one of those agonizing reappraisals of all our hopes, emotions, thoughts, about what is surely the most wretched of all the problems before our society.

A SIMPLE PROPOSITION

We begin, I think, with a simple proposition. It is that it was, and is *morally* wrong for a society to say to one group of people that because of their color they are pariahs—that the majesty of law can be used to segregate them in their homes, in their schools, in their livelihoods, in their social contacts with their fellows. The wrong is in no wise mitigated by any plea that society may provide well for them within their segregated state. That has nothing to do with the moral question.

In 1954, for the first time, the Supreme Court stated that moral imperative. Beginning with the school decision the judges in a series of decisions struck down the legal underpinnings of segregation.

Since emotions and prejudices are not swept away by court decisions there were some white people in all parts of the country who resisted the change. But they were, for all their noise, in the minority. The great body of our people, even in the South where prejudice had congealed into custom, began the task of stripping away the battens of segregation. Slowly, perhaps, but relentlessly.

Then some people—men of good will, mostly—said this was not enough. They noticed that the mere ending of segregation did not mix whites and blacks in social intercourse. Neighborhoods remained either predominantly white or black. So did schools, because our schools are related to our neighborhoods. So did many other things. Not because of the law, but because of habit, economics, preferences—or prejudices, if you prefer.

From this came the concept of "de facto" segregation. This Latin phrase, borrowed from the law, describes any separation of whites and blacks that exists in fact and equates it with the segregation proscribed by law. The cause matters not. These men of good will concluded that if segregation in law is bad then any separation that exists in fact is equally bad.

From this view we were led to attack any separation as de facto segregation. Since the first attack on segregation came in the schools, the schools became the first place for the attack on separation from whatever cause. And since the law had served us well in the first instance, we chose—our lawmakers chose—to use the law for the second purpose also. The law, that is, was applied to compel not merely an end to segregation but an end to separation by forced integration.

It was at this point that we fell into the abyss. The error was not merely that we created a legal monstrosity, or something unacceptable politically to both whites and blacks.

The tragedy is that we embraced an idea *morally* wrong.

That must be recognized if we are to understand all else. For what is wrong about forced integration in the schools is not its impracticality, which we all now see, but its immorality, which is not yet fully grasped.

Let us consider.

Imagine, now, a neighborhood in which 95% of the people are white, 5% of them black. It is self-evident that we have here a de facto imbalance. We do not have legal segregation, but we do not have integration either, at least not anything more than "tokenism."

Let us suppose also that for some reason—any reason, economics, white hostilities, or perhaps black prejudice against living next door to whites—the proportion does not change. The only way then to change it is for some of the whites to move away and, concurrently, for some blacks who live elsewhere to move into this neighborhood. One is not enough. Both things must happen.

CREATING AN IMBALANCE

Or let us suppose the proportion does change. Let us suppose that for some reason—any reason, including prejudice—large numbers of white families move out of the neighborhood, making room for black people to move in, so that after a few years we have entirely reversed the proportions. The neighborhood becomes 95% black, 5% white.

Again we have an imbalance. Again we do not truly have segregation but call it that, if you wish; de facto segregation. In any event we do not have integration in the sense that there is a general mixing, together of the blacks and whites.

Now suppose that we act from the assumption that this is wrong. That it is wrong to have the neighborhood either 95% white or 95% black. That the mix, to be "right," must be some particular proportion.

What action is to be taken? In the first instance, do we by law forcefully remove some of the white families from the neighborhood so that we can force in the "proper" number of black families? Or, in the second instance, do we by law prohibit some of the white families from moving out of the neighborhood? If we do either, who decides who moves, who stays?

The example, of course, is fanciful. We do none of this. No one has had the political temerity to propose a law that would send soldiers to pick people up and move them, or to block the way and prevent them from moving. No one stands up and says this is the moral thing to do.

Stated thus badly, the immorality of doing such things is perfectly clear. No one thinks it moral to send policemen, or the National Guard bayonets in hand, to corral people and force them into a swimming pool, or a public park or a cocktail party when they do not wish to go.

No one pretends this is moral—for all that anyone may deplore people's prejudice—because everyone can see that to do this is to make of our society a police state. The methods, whatever the differences in intent, would be no different from the tramping boots of the Communist, Nazi or Fascistic police states.

All this being fanciful, no one proposing such things, it may seem we have strayed far from the school integration program. But have we?

The essence of that program is that we have tried to apply to our schools the methods we would not dream of applying to other parts of society. We have forced the children to move.

There are many things wrong with the forcible transfer of children from school to school to obtain the "proper" racial mix. It is, for one thing, wasteful of time, energy and money that could better be applied to making all schools better.

To this practical objection there is also the fact that in concept it is arrogant. The unspoken idea it rests upon is that black children will somehow gain from putting their black skins near to white skins. This is the reverse coin of the worst segregationist's idea that somehow the white children will suffer from putting their white skins near to black skins.

Both are insolent assertions of white superiority. Both spring from the same bitter seed.

Still, the practical difficulties might be surmounted. The implied arrogance might be overlooked, on the grounds that the alleged superiority is not racial but cultural; or that, further, both whites and blacks will gain from mutual association. That still leaves the moral question.

Perhaps it should be restated. Is it moral for society to apply to children the force which, if it were applied to adults, men would know immoral? What charity, what compassion, what morality is there in forcing a child as we would not force his father?

It is a terrible thing to see, as we have seen, soldiers standing guard so that a black child may enter a white school. You cannot help but cringe in shame that only this way is it done. But at least then the soldiers are standing for a moral principle—that no one, child or adult, shall be barred by the color of his skin from access to what belongs to us all, white or black.

But it would have been terrifying if those same soldiers had been going about the town rounding up the black children and marching them from their accustomed school to another, while they went fearfully and their parents wept. On that, I verily believe, morality will brook no challenge.

Thus, then, the abyss. It opened because in fleeing from one moral wrong of the past, for which we felt guilty, we fled all unaware to another immorality. The failure is tragic because in so doing we heaped the burdens upon our children, who are helpless.

MUST WE TURN BACK?

Does this mean, as many men of good will fear, that to recognize as much, to acknowledge the failure of forecd integration in the schools, is to surrender, to turn backward to what we have fled from?

Surely not. There remains, and we as a people must insist upon it, the moral imperative that no one should be denied his place in society, his dignity as a human being, because of his color. Not in the schools only, but in his livelihood and his life. No custom, no tradition, no trickery should be allowed to evade that imperative.

That we can insist upon without violating the other moral imperative. So long as he does not encroach upon others, no man should be compelled to walk where he would not walk, live where he would not live, share what company he would shun, think what he would not think, believe what he believes not.

If we grasp the distinction, we will follow a tragic failure with a giant step. And God willing, not just in the schools.

Mr. ERVIN. I also ask unanimous consent to have printed in the RECORD an article written by a very perceptive black commentator, William Raspberry, and published in the Washington Post on February 20, 1970, in which he truthfully states that "Concentration on Integration Is Doing Little for Education."

He talks about busing, and his concluding paragraph is:

But it has accomplished nothing useful when it has meant transporting large numbers of reluctant youngsters to schools they'd rather not attend.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Feb. 20, 1970]

CONCENTRATION ON INTEGRATION IS DOING LITTLE FOR EDUCATION

(By William Raspberry)

Racial segregation in public schools is both foolish and wrong, which has led a lot of us to suppose that school integration must, therefore, be wise and just.

It ain't necessarily so. It may be that one reason why the schools, particularly in Washington, are doing such a poor job of educating black children is that we have spent too much effort on integrating the schools and too little on improving them.

The preoccupation with racial integration follows in part from a misreading of what the suit that led to the 1954 desegregation decision was all about.

The suit was based (tacitly, at least) on what might be called the hostage theory. It was clear that black students were suffering under the dual school systems that were the rule in the South. It was also clear that only the "separate" part of the separate-but-equal doctrine was being enforced.

Civil rights leaders finally became convinced that the only way to ensure that their children would have equal education with white children was to make sure that they received the same education, in the same classrooms.

Nor would the education be merely equal, the theory went: It would be good. White people, who after all run things, are going to see to it that their children get a proper education. If ours are in the same classrooms, they'll get a proper education by osmosis.

That, at bottom, was the reasoning behind the suit, no matter that the legal arguments were largely sociological, among them, that segregated education is inherently unequal.

(Why it should be inherently more unequal for blacks than for whites wasn't made clear.)

In any case, the aim of the suit was not so much integrated education but better education. Integration was simply a means to an end.

Much of the confusion today stems from the fact that the means has now become an end in itself. Suits are being brought for integration, boundaries are being redrawn, busing is being instituted—not to improve education but to integrate classrooms.

The results can sometimes be pathetic.

In Washington, blacks send their children (or have them sent) across Rock Creek Park in pursuit of the dream of good education. But as the blacks come, the whites leave, and increasingly we find ourselves busing children from all-black neighborhoods all the way across town to schools that are rapidly becoming all-black.

The Tri-School setup in Southwest Washington is a case in point. Of the three elementary schools in the area, only one was considered a good school: Amidon, where the children of the black and white well-to-do attended. Bowen and Syphax, populated almost exclusively by poor kids from the projects, were rated lousy schools.

Then the hostage theory was applied. A plan was worked out whereby all first- and second-graders in the area would attend one school, all third- and fourth-graders a second, and all fifth- and sixth-graders the third.

The well-to-do parents would see to it that their children got a good education. All the poor parents had to do was to see to it that their children were in the same classrooms.

That was the theory. What happened, of course, is that instead of sprinkling their children around three schools, the luxury high-rise dwellers, black and white, packed their youngsters off to private school. Now instead of one good and two bad schools, Southwest Washington has three bad ones.

After 16 years, we should have learned that the hostage theory doesn't work. This is not to suggest that integration is bad but that it must become a secondary consideration.

Busing makes some sense (as a temporary measure) when its purpose is to transport children from neighborhoods with overcrowded classrooms to schools where there is space to spare.

It works to a limited degree when it involves children whose parents want them bused across town for specific reasons.

But it has accomplished nothing useful when it has meant transporting large numbers of reluctant youngsters to schools they'd rather not attend.

The notion will win me the embarrassing support of segregationist bigots, but isn't it about time we started concentrating on educating children where they are?

Mr. ERVIN. I also ask unanimous consent to have printed in the RECORD an article written by the perceptive commentator, Richard Wilson, and published in the Washington Evening Star on February 18, 1970, entitled "Has Integration Reached Its Practical Limits?"

In this article, Mr. Wilson points out something all of us know, although it is denied here on the floor of the Senate, which is that the North has refused to accept these things.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Star, Feb. 18, 1970]

HAS INTEGRATION REACHED ITS PRACTICAL LIMITS?

(By Richard Wilson)

The present school crisis should be better understood. It involves not merely equal treatment, North and South, on school desegregation.

A general principle is involved applying to housing, employment and other practical and legal matters of race adjustment but, more than that, the more highly sensitized issue of enforced racial integrations based on morals, ethics and justice.

A crisis has thus been created. It goes beyond the strictly constitutional requirement for the desegregation of all public facilities.

Now the courts and certain agencies of government are saying that absence of overt discrimination is not enough. There must be plans, goals and quotas superseding all established living patterns which will mix the races as a humanitarian and social requirement.

This is what the North has refused to accept. In the North, South, East and West people have adjusted their lives to accommodate their personal racial integration to the practical level they regard as desirable or necessary under their own circumstances.

For example, Sen. Abraham Ribicoff's recent anguished support of the Stennis amendment for equal treatment, North and South, must be taken against the background of the bitter refusal of whites in his own state of Connecticut to change their living patterns to conform to school integration plans. They do not, in short, want busing.

As another example, a state judge in California has ordered the enforced integration—not merely desegregation—of the Los Angeles schools on a basis requiring the daily movement of many thousands of children over long distances in that vast area.

If such principles are to be carried into the general life of the country, such additional action as this might be expected: Fixed quotas of Negro residency in new suburban subdivisions, established goals or quotas of Negro employment in all businesses and professions; fixed quotas of admission of Negroes in all institutions of higher learning; fixed quotas of Negro employment by public agencies.

Then, to carry the matter a step further, it might be considered logical that all churches, clubs, organizations should, as a matter of social right, contain Negroes in proportion to their numbers of the local and general population.

The line between what is called de jure segregation and de facto segregation would thus be crossed. A tremendous amount of confusion and passion has been aroused because so many whites and blacks do not wish to cross the line.

This has impeded the integration of the school system in all sections of the country. As Ribicoff has stated, the whites just move away from areas in which the integration of the public schools passes their acceptance or tolerance, and that varies with individuals.

The temptation is to say that this nation will not accept racial integration regardless of what the courts say or government agencies do. That would not be literally correct. There has been much integration at least on the fringes of contacts between the two races.

But the question presents itself whether such integration as there has been has come to its practical limits, for some time to come, at least.

There is a big difference between what Congress has defined, what government agencies are doing and what the lower courts are saying. Employment is a case in point. Congress says there should be no quotas of Negro employment. The government has, in effect, established such quotas in the building trades.

The Supreme Court does not tell if de facto segregation resulting from living patterns is constitutional or not. Lower courts, nevertheless, establish integration planes affecting neighborhood living patterns.

In many instances, desegregation has merely created new segregation. The leading impression is one of helplessness and bafflement because the nation will not integrate itself socially on more than a token basis, and that causes such cries of despair as Ribicoff's.

Mr. ERVIN. Before yielding the floor, I would like to say that I urge the Senate to reject the amendment. I urge the Senate to do this in order that it might have a better image in the minds of the people than the image which will be projected if the people think that either Senators lack knowledge of what the Constitution means, although they are required to support it, or that Senators do not have the fortitude to stand up and face squarely one of the most crucial issues confronting our country.

I fear—in fact, I know—that the adoption of this resolution, which is a rather weasel-worded thing at best, will tend to create this latter image of the Senate in the minds of the people.

I yield the floor.

EXHIBIT 1

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE.

HON. WARREN G. MAGNUSON,
Chairman, Subcommittee on Departments of Labor, and Health, Education, and Welfare and Related Agencies, Committee on Appropriations, U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: This letter contains our comments and recommendations on H.R. 15931, as passed by the House of Representatives yesterday, February 19.

Statements are enclosed which describe the effect of the House action on H.R. 15931 wherever this action differs from either the President's budget, as amended, or from H.R. 13111 as passed by the Senate on January 26. I am also enclosing a listing of all the amendments which this Department recommends to H.R. 15931 as passed by the House. Otherwise, I would like to confine the contents of this letter to the implications of the House action in light of the President's veto of H.R. 13111.

Let me express my judgment that the action of the House does not adequately respond to the objections that the President made on H.R. 13111 and that served as the basis for his veto. When examined in these terms, it is clear that the bill continues to carry the same excesses and faults that caused the President to veto this important and vital measure in the first place. Specifically, comparing the bill with each of the reasons cited by the President in his veto message, I find that it would—

1. Still add almost $900 million to the President's original budget for the Department of Health, Education, and Welfare and thereby continue the inflationary characteristics of the vetoed bill.

2. Still be the all-time high for increases over any President's budget for HEW—bar none. No previous Congress has ever added so much to the HEW appropriation for any year.

3. Still constitute by far the largest increase over the President's budget for any 1970 appropriation bill passed by the 91st Congress.

4. Continue to impose on the President large increases in mandatory formula grant programs over which the President can exercise little or no control in his management of the overall Federal budget. The bill as passed by the House carries more than $848 million in increases for mandatory formula grants without one single word of language or other authority that would give the President discretion over how and when these increases might be spent.

5. Still add large sums for what, in my opinion, are marginal or misdirected programs which need to be reevaluated or overhauled—not expanded. Many of these funds are for activities which could well be deferred until such evaluations and reforms are completed—or until inflation is checked.

6. Still add large sums that cannot be spent effectively so late in the fiscal year.

7. Continue to ignore the President's requests for new approaches and new initiatives for the future.

THE BILL CONTINUES TO BE INFLATIONARY

In his veto message, the President cited inflation as his first reason for veto. In his message, he said: "These increases are excessive in a period of serious inflationary pressure. We must draw the line and stick to it if we are to stabilize the economy." That statement was made about an increase in his original budget that added up to more than $1.2 billion. We contend that by dropping only $364 million, the House bill does not go far enough to meet the President's objection and in no way represents a "holding of the line."

Any bill that adds almost $900 million ($896 million to be exact) to the original budget request must be viewed as excessive during this critical time in the President's fight against inflation.

THE BILL TIES THE HANDS OF THE PRESIDENT BY INCREASING AMOUNTS FOR MANDATORY FORMULA GRANTS

In my opinion, this stands as the most grievous defect in the House bill. Despite the President's suggestion that this problem could be solved through the use of appropriation language giving him discretionary authority over such formula grants, the bill, as I said above, continues to force upon the President over $848 million in increases for mandatory formula grants. If he is to

limit overall Federal spending, he must make offsetting reductions in other programs. With only 4¼ months remaining, this places the President in an absolutely untenable position. Too much of the Federal budget is already committed to make such a large offset so late in the year.

This factor alone would make it impossible for me to recommend to the President that he accept the bill in its present form.

THE BILL STILL CARRIES TOO MUCH MONEY TO BE SPENT TOO LATE IN THE FISCAL YEAR

The President has already called out attention to what has been a traditional concern of the Congress, namely, that money not be appropriated so late in the fiscal year as to invite hasty and unwise expenditures. How often has the Congress challenged June buying by the Executive Branch? How often has the Congress cut supplemental appropriations because the money would come too late to be spent wisely? Yet, in this bill, the House seems to have turned its back on sound Congressional tradition. Unless the Senate reverses the House action, the President would stand alone as the only one who seems to advocate this kind of judgment. We have already lost almost a month since the Senate passed the last bill. This, combined with the continued rise in inflation, makes it all the more important that we pare down those portions of the bill that would result in end-of-year spending.

THE BILL CONTINUES TO ADD MONEY FOR MARGINAL PROGRAMS WHILE IGNORING THE PRESIDENT'S PRIORITIES

In his February 2 letter to the Speaker of the House, enclosed, the President proposed a compromise which would add $449.1 million to his original budget for HEW. Within this compromise were several programs for which the President expressed a willingness to accept Congressional increases in their entirety. In other instances, he proposed to meet the Congress part way. Proposals falling in this category had been weighed carefully for their merit and priority, for their inflationary impact, and in terms of whether additional money could be wisely spent between now and June 30. Except for Hill-Burton hospital construction, where the House bill comes close to adopting the President's February 2 alternatives, the action of the House brushes aside the President's compromise funding levels. The bill continues to carry large sums for school equipment, library books, and other deferrable purchases, while at the same time ignoring completely the President's request for reinstatement of two new initiatives—his request for funds to launch an experimental school program and enlarge the dropout prevention program.

RECOMMENDATION FOR SENATE ACTION

As I have already said, taken in its present form, I would have no choice but to recommend to the President that he veto H.R. 15931. Thus, I see the Senate as playing a vital role in avoiding another impasse. I hope that the Senate will be able to help the President reach his objective. I urge the Senate to take appropriate action to reduce the overall level of appropriations for this Department as proposed in H.R. 15931.

Based on statements by the President in his veto message, and based on the proposals that he made to the Congress in his letter of February 2 to the Speaker of the House, it is quite clear that the President desires to find an accommodation. There are two approaches open to the Senate, either of which, I am confident, would be acceptable to the President. These are:

1. Modify H.R. 15931 so that it would reflect the proposals made by the President in his letter to the Speaker of February 2. In his letter, the President proposed amendments which provided increases over his original budget totaling $449 million. The President's proposals would result in a 1970 budget that totals $16,790,705,000. This would provide a total budget for this Department that is almost 10 percent higher than that approved by the Congress for 1969. The increases proposed by the President over the vetoed 1970 appropriation bill are as follows:

$238 million for impacted area aid

$70 million for basic grants for vocational education

$25 million for grants for education of the disadvantaged under Title I of the Elementary and Secondary Education Act

$40 million in additional funds for supplementary education services and other forms of support to elementary and secondary education

$10 million for public library services

$6 million for education of the handicapped

$8.8 million for education professions development

$29.7 million for the National Institutes of Health

$10 million to accelerate the rubella vaccination program

$7 million to intensify air pollution research efforts

$4 million for treatment of alcoholism

The listing of amendments enclosed would bring the bill into full agreement with the President's February 2 alternative.

2. The second course open to the Senate which would clearly in my view, satisfy the President would be to include language in the bill giving the President discretionary authority over the so-called mandatory formula grants which make up such a large share of the bill. As the matter stands, the bill calls for almost $4.3 billion in mandatory formula grants.

Our enclosed list of recommended amendments includes a general provision which would, if adopted, resolve the issue.

In other words, the simple action of including this one piece of language in the bill could make it possible for the President to accept the bill. I would like to emphasize that should this course be adopted by the Congress, the President and this Department are committed to the obligation of all funds, including the so-called mandatory formula grants, to at least the levels indicated in the President's February 2 budget amendments. This, of course, includes impacted area aid.

As I have already said, this might well prove to be the quickest and simplest way to solve our problem. As I understand it, although a similar provision included in the House Committee bill was deleted on a "point of order" on the floor of the House, should such a provision be later adopted by the Senate and agreed to by House-Senate Conferees, the House rule would not permit its deletion a second time on a "point of order." In other words, if the Senate were to adopt this language, it seems to me that its chances for final approval by the Congress as a whole would be quite good.

GENERAL PROVISIONS IN H.R. 15931

There are three general provisions carried in the House bill which are of concern to this Department—sections 408, 409, and 410.

As you know, sections 408 and 409 are identical with provisions contained in H.R. 13111, as originally passed by the House. I would recommend that the Senate follow exactly the same course of action it followed in dealing with these provisions in H.R. 13111.

Insofar as the new section 410 of the bill is concerned, it is my belief that it may well have been born out of misunderstanding on the part of the House concerning the role and activities of the Office for Civil Rights of this Department. Let me say that it is not the role of the Office for Civil Rights to interpret the Constitution and the law. That is the responsibility of the courts. Once the courts have acted, it is the responsibility of this Department to extend a helping hand to school districts in their efforts to comply with court decisions. Because the courts have already in many instances, decreed that "freedom of choice plans" that result in discrimination are illegal, all that section 410 can do is prevent this Department from working with and helping local school districts who are trying to comply with such court orders. Because section 410 does not appear to be consistent with actions of the courts, it could only produce an administrative nightmare for our Department. If we are to avoid the administrative chaos that this section would produce at all levels, section 410 should be deleted from the bill.

CONCLUSION

I believe, Mr. Chairman, that you are as anxious as we are to complete action on this appropriation bill. I respectfully request that the Senate modify the House bill along either of the two lines suggested above. Our Department stands ready to support and help you to this end in every way possible.

I have furnished Senator Cotton with a courtesy copy of this letter.

Sincerely,

———— ————.

Secretary.

REQUESTED AMENDMENTS

Amendments Requested by the Department of Health, Education, and Welfare to H.R. 15931 91st Congress, First Session in the Senate of the United States:

TITLE II—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

CONSUMER PROTECTION AND ENVIRONMENTAL HEALTH SERVICE

AIR POLLUTION CONTROL

1. Page 12, line 18, strike out "$108,000,000" and insert in lieu thereof "$102,800,000".

2. Page 12, line 199, strike out "$45,000,000" and insert in lieu thereof "$30,000,000".

HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION

MENTAL HEALTH

3. Page 14, line 11, strike out "$360,302,000" and insert in lieu thereof "$354,002,000".

4. Page 14, line 12, strike out "$47,500,000" and insert in lieu thereof "$41,200,000".

HOSPITAL CONSTRUCTION

5. Page 17, line 1, strike out "$176,123,000" and "$81,300,000" and insert in lieu thereof "$153,923,000" and "$50,000,000".

6. Page 17, line 6, strike out "$90,900,000" and insert in lieu thereof "$100,000,000".

7. Page 17, line 11, strike out the following:

"DISTRICT OF COLUMBIA MEDICAL FACILITIES

"For grants of $3,500,000 and loans of $6,500,000 for nonprofit private facilities pursuant to the District of Columbia Medical Facilities Construction Act of 1968 (Public Law 90–457) to remain available until expended."

NATIONAL INSTITUTES OF HEALTH

NATIONAL INSTITUTE OF ARTHRITIS AND METABOLIC DISEASES

8. Page 20, line 9, strike out "$146,334,000" and insert in lieu thereof "$137,668,000".

NATIONAL INSTITUTE OF NEUROLOGICAL DISEASES AND STROKE

9. Page 20, line 14, strike out "$106,978,000" and insert in lieu thereof "$101,256,000".

NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES

10. Page 20, line 19, strike out "103,694,500" and insert in lieu thereof "$102,389,000."

NATIONAL INSTITUTE OF GENERAL MEDICAL SCIENCES

11. Page 21, line 2, strike out "$164,644,000" and insert in lieu thereof "$154,288,000".

GENERAL RESEARCH AND SERVICES

12. Page 21, line 24, strike out "$76,658,000" and insert in lieu thereof "$69,698,000".

HEALTH MANPOWER

13. Page 22, line 15, strike out "$234,470,000" and insert in lieu thereof "$224,220,000".

DENTAL HEALTH

14. Page 23, line 14, strike out "$11,722,000" and insert in lieu thereof "$10,887,000".

BUILDINGS AND FACILITIES

15. Page 24, line 9, strike out "$1,900,000" and insert in lieu thereof "$1,000,000".

OFFICE OF EDUCATION

ELEMENTARY AND SECONDARY EDUCATION

16. Page 26, line 18, strike out after "titles" the numeral "II".

17. Page 26, line 22, strike out the following:

"$252,393,000; of which $50,000,000 shall be for school library resources, textbooks, and other instructional materials under title II of said Act of 1965; $116,393,000" and insert in lieu thereof "$220,393,000, of which $156,393,000".

18. Page 27, line 1, strike out the following: "$17,000,000 shall be for guidance, counseling, and testing under title V–A of said Act of 1958".

19. Page 27, line 5, strike out "$5,000,000" and insert in lieu thereof "$15,000,000".

20. Page 27, line 8, strike out "$25,000,000" and insert in lieu thereof "$10,000,000".

21. Page 27, line 12, strike out "$386,160,700" and insert in lieu thereof "$240,185,700".

22. Page 27, line 18, strike out the following

"INSTRUCTIONAL EQUIPMENT

For equipment and minor remodeling and State administrative services under title III–A of the National Defense Education Act of 1958, as amended, $43,740,000: *Provided*, That allotments under sections 302(a) and 305 of the National Defense Education Act, for equipment and minor remodeling shall be made on the basis of $40,740,000 for grants to States and on the basis of $1,000,000 for loans to nonprofit private schools, and allotments under section 302(b) of said Act for administrative services shall be made on the basis of $2,000,000."

SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS

23. Page 28, line 7, strike out "$520,567,000 of which $505,500,000" and insert in lieu thereof "$440,167,000 of which $425,000,000".

24. Page 28, line 18, strike out "." and insert ": *Provided further*, That the amount to be paid to an agency pursuant to said title (except section 7) for the current fiscal year shall not be less, by more than 5 per centum of the current expenditures for free public education made by such agency for the fiscal year 1969, than the amount of its entitlement under said title (except section 7) for the fiscal year 1969."

EDUCATION PROFESSIONS DEVELOPMENT

25. Page 28, line 23, strike out "$107,500,000, of which $18,250,000" and insert in lieu thereof "$103,750,000, of which $15,000,000".

HIGHER EDUCATION

26. Page 29, line 18, strike out "$871,874,000" and insert in lieu thereof "$771,774,000".

27. Page 30, line 12, strike out the following: "and $33,000,000 shall be for grants for construction of other academic facilities".

28. Page 30, line 17, strike out "$222,100,000" and insert in lieu thereof "$155,000,000".

VOCATIONAL EDUCATION

29. Page 31, line 5, strike out "$391,716,000" and insert in lieu thereof "$347,216,000".

30. Page 31, line 7, strike out the following: "$20,000,000 shall be for programs under section 102(b) of said Vocational Education Act of 1963, including development and administration of State plans and evaluation and dissemination activities authorized under section 102(c) of said Act, and $5,000,000 for work-study programs under part H of said Act,"

31. Page 31, line 13, strike out "$2,800,000" and insert in lieu thereof "$1,680,000".

32. Page 31, line 18, strike out "$17,500,000" and insert in lieu thereof "$15,000,000".

LIBRARIES AND COMMUNITY SERVICES

33. Page 31, line 23, after "I" strike out "II".

34. Page 32, line 5, strike out "$148,881,000, of which $35,000,000" and insert in lieu thereof "$117,709,000, of which $27,500,000".

35. Page 32, line 8, strike out the following: "$9,185,000, to remain available through June 30, 1971, shall be for grants for public library construction under title II of such Act,".

36. Page 32, line 17, strike out "$6,737,000" and insert in lieu thereof "$4,500,000".

37. Page 32, line 22, strike out "$5,083,000" and insert in lieu thereof "$4,000,000".

EDUCATION FOR THE HANDICAPPED

38. Page 33, line 11, strike out "$100,000,000, of which $29,190,000" and insert in lieu thereof "$91,850,000, of which $29,250,000".

RESEARCH AND TRAINING

39. Page 33, line 22, strike out "$85,750,000" and insert in lieu thereof "$95,250,000".

40. Page 34, line 7, strike out "." and insert the following "and $9,500,000 to remain available through June 30, 1971, shall be available under said Cooperative Research Act for experimental schools."

SOCIAL AND REHABILITATION SERVICE

GRANTS FOR REHABILITATION SERVICES AND FACILITIES

41. Page 37, line 16, strike out "$464,783,000" and insert in lieu thereof "$461,283,000".

42. Page 37, line 23, strike out "$4,050,000" and insert in lieu thereof "$550,000".

MENTAL RETARDATION

43. Page 38, line 23, strike out "$37,000,000, of which $12,031,000" and insert in lieu thereof $33,000,000, of which $8,031,000".

MATERNAL AND CHILD HEALTH AND WELFARE

44. Page 39, line 11, strike out "$284,800,000" and insert in lieu thereof "$282,400,000".

TITLE IV—GENERAL PROVISIONS

45. Page 60, line 19, after "408." insert: "Except as required by the Constitution.

46. Page 61, line 1, after "409." insert "Except as required by the Constitution".

47. Page 61, after "410." strike out the following:

"No part of the funds contained in this Act shall be used to provide, formulate, carry out, or implement, any plan which would deny to any student because of his or her race or color, the right or privilege of attending any public school of his or her choice as selected by his or her parent or guardian."

And insert in lieu thereof:

"In the administration of any program provided for in this Act, as to which the allocation, grant, apportionment, or other distribution of funds among recipients is required to be determined by application of a formula involving the amount appropriated or otherwise made available for distribution, the amount available for expenditure or obligation (as determined by the President) shall be substituted for the amount appropriated or otherwise made available in the application of the formula."

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. I yield 10 minutes to the Senator from California.

Mr. MURPHY. I thank my distinguished colleague.

Mr. President, I have listened with a great deal of interest to the debate. I am concerned about the possible confusion as to the position of the President of the United States. Insofar as I have been able to ascertain, the position of the President of the United States has not changed. I think it is very clear that he believes in the equal application of the law in all States. He is opposed to busing to achieve racial balance. He is strongly opposed to anything that will break up the basic value of the legendary condition of the neighborhood school. I am too.

I have read very carefully the record of the previous debate. We have been over the same ground. There does not seem to be much added or changed.

An analysis of the vote on December 17, 1969, shows that those opposing the amendment thought it was unnecessary. If the provisions of sections 408 and 409 were unconstitutional this language will not add anything. I have been concerned as to exactly what is constitutional.

I find that from time to time, in the history of our great Nation, it depends upon what the particular group *sitting* in the Supreme Court at the particular moment decides is constitutional. This is a cause of concern to me, and I would hope that some time in the not too distant future a safeguard in these matters could be built into the protection of the Constitution.

Mr. President, amendments would prohibit the use of funds to force a school district to take any action involving the busing of students. It is said in the opinion that instead of being in conflict with the Constitution, they are in harmony with the equal protection clause of the 14th amendment as interpreted in 1954 by the Supreme Court. I do not see the necessity for this particular amendment.

I refer to a statement I made in this matter on February 26, released to my constituents in my State. I said:

Suddeny, our nation and our State are faced with a renewed educational crisis . . .

This was because of a judgment that was passed down by a judge in Los Angeles. I do not in any way wish to criticize the judge or his decision. But this crisis came in my State, in its chief city, as a direct result of that judge's findings.

All men have an absolute *right* to share in the privileges and duties of this great Nation—regardless of religion, national origin, or color.

I have consistently voted for civil rights for all men during my first term as a Member of the U.S. Senate. I am a coauthor of the 1965 Civil Rights Act.

However, I believe mandatory busing of schoolchildren to achieve racial balance in California schools is impractical. Courts who do not consider the full consequences of their decisions are thoughtless. They do not help our society in trying to solve critical social problems. They hurt progress rather than cause it.

To force a group of youngsters to leave their neighborhoods and be bused across town just to comply with a mathematical formula laid down by a slide-rule jurist is not just, fair, or equitable.

It solves no problems, but it does create some. Not the least of these problems is that busing interferes with special programs designed specifically to reach the minorities.

Such as the program in which I take great pride, the bilingual education program, a program designed to give equal opportunity of learning to youngsters in my State who come from Spanish-speaking homes, who go into the school system not understanding the language used there.

I was shocked to learn that there was a law in my State that prohibited bilingual education. Fortunately, with the help of my distinguished, long-time friend, the Governor of the State, that law was changed quickly. Then, with the help of my colleagues on the committee, on which I am pleased to serve, we got the bilingual education program started. It is proving to be very successful. It is proving to be practical. It is proving to be something that should have been done many, many years ago.

I believe—and I so voted last week—that everyone in this Nation should be equally affected by the law—North or South, East or West.

I do not think that we in this Chamber should write specific laws for any particular area or vary them by town or State.

We are one Nation. I do not believe in granting special privilege or imposing special punishment to one section of this country.

I went to an integrated school when I was a youngster, a school in which I believe 75 to 80 percent of the students were Negroes. The experience certainly has not done me any harm, and I believe the experience has helped me to understand the problems and, hopefully, to add my voice in finding solutions to bring about the important final result of equal education of high quality, not based on some mathematical balance, but based on the expertise of the teachers, the commonsense and practical approach of the curriculum, to accomplish the basic purpose in order to give the young people a background and understanding and the tools which will be needed for them to take their proper, productive place in our society as they grow up, without any impediment.

Now I have to be practical. In representing the largest State in the Union, I am forced to be. We know a good deal about integration in California. I am sure that many of my colleagues have read about a town called Delano, about which there has been a great deal of misinformation. Delano, to my knowledge, is as successful and totally integrated town as there is anywhere in the United States.

There is another town in my State, Watts, about which there is also a great deal of misinformation. It is not a ghetto. It is a fine community with fine people, good houses, good schools, and good children growing up there. A small part of the neighborhood is bad. I venture to say there is not a town or city in this country that has not got one small area of which they are not proud.

I am glad to say that we have made great improvements. That was not a new problem with California. It is one I knew something about many years ago before I came to the Senate. Many of us on the west coast have been working on the problems that were concentrated in the bad areas to see if we could not do away with them, properly and constructively, and in some other fashion than with molotov cocktails or burning down stores and buildings.

There is a better way—a much better way.

The latest figures I have available show that 382,000 Negro pupils go to California schools. That is 9 percent of the total enrollment. There are 613,000 Spanish-American students in the schools in California. That is 14 percent of the total enrollment.

Busing will cost the city of Los Angeles alone $40 million, money which they do not have. If they had it, they could find a much better way to spend it, and that is by increasing the quality of education.

Busing will cost the State of California $140 million which, in my opinion, will neither benefit education nor advance social progress.

What of the people involved?

What of the rights of the families who say—and I get plenty of mail on this, I guess as much as any Member of this body—"I do not want my child sent 18, 20, or 30 miles to another school. I do not want my child to have to spend 2½ to 3 hours a day on a bus, being taken from one area to another."

These people are not racist, Mr. President, they are merely concerned parents who would like to have quality education provided for their children and they feel—as I do—in order, at long last, to create equal opportunity for all the citizens of this country.

Busing to fulfill a mathematical equation, in my opinion, is unnecessary and unwarranted.

I am afraid that the judicial branch of our Government, at least some of it, has forgotten to be practical in its enthusiasm for what it considers—and I think wrongly—to be needed social reform.

Mr. President, a great majority of the citizens of California are opposed to this. They have been vocal in their opposition, that it is not practical, and that it will not achieve nearly as well what can be done by increasing the quality of education. The leaders of all groups have notified my office of their feelings.

Therefore, let us concentrate on the quality of education. I have authored various bills to include educational quality. Only recently the Senate adopted a program, the Urban Rural Education Act to provide additional funds to school districts, having large numbers or a high concentration of children from low-income families. The dropout program is another. Let us, above all, in our great enthusiasm for civil rights, not forget that civil rights extends to all the people, and that includes the parent who wants to keep his child in the neighborhood school. Let us not forget the importance of the community and the neighborhood school. Those parents have rights, too. And they should be considered.

So, Mr. President, I see nothing in the amendment that will do anything to solve our problems. To the contrary, I feel that it might add to the already too far-flung confusion.

Therefore, I will oppose the amendment and urge my colleagues to do likewise.

Mr. STENNIS. Mr. President, I yield myself 1 minute to inquire of Senators if there is anyone who wishes to speak in favor of the amendment at this time.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SPARKMAN in the chair). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MATHIAS. Mr. President, I should like to request that the time which was consumed for the call of the quorum just completed be taken out of my time and not out of the time of the distinguished Senator from Mississippi (Mr. STENNIS).

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MATHIAS. Mr. President, I yield 10 minutes to the Senator from Minnesota (Mr. MONDALE).

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 10 minutes.

Mr. MONDALE. Mr. President, I rise to support the amendment offered by the distinguished Senator from Maryland (Mr. MATHIAS). Sections 408, 409, and 410, the so-called Whitten and Jonas amendments, are, in my opinion, clearly unconstitutional.

There has run throughout this debate the assumption that we are dealing here with matters of what is desirable or what is not desirable in terms of social policy—as though there was not a constitutional and legal issue involved.

The truth of it is that the Supreme Court has repeatedly held that official discrimination in the assignment of students to public schools is a violation of the equal protection clause of the 14th amendment of the Constitution. It is not a question of what some of us would like to do or not like to do. It is a question of whether we intend to uphold the Constitution. It is a question of whether we believe in—if I may use the term—law and order; a question of whether there are some laws we enforce and some laws we ignore, and some laws we implement and some laws we obstruct.

Both the Whitten and Jonas amendments are designed to obstruct the law of the land. They are designed to frustrate the orders of the Supreme Court which are directed toward protecting the human rights of the people of this country. And that must be clearly kept in mind.

There are Supreme Court decisions right on point. Under the Whitten amendment, the Department of Health, Education, and Welfare would be required to accept freedom of choice desegregation plans in all cases, even though those plans do not meet constitutional requirements.

In other words, the Supreme Court could determine that a school district was deliberately discriminating, that it

had a conscious policy of separating children on the basis of color and putting them in black schools or in white schools. It could then determine that the freedom-of choice plan did not end this policy and that the school district, through a freedom-of-choice plan was pursuing a policy which was discriminatory and which was illegal under the Constitution. Yet, the Whitten amendment's purpose is to set aside these findings and to authorize a policy which is unconstitutional.

In the Green against New Kent County, the court was faced with a freedom-of-choice plan which clearly perpetuated an official policy of discrimination.

The school district had a so-called freedom-of-choice policy for several years, and the black school remained segregated. In fact, there was not a white child in the black school. It was an all-black school.

The court ruled that the freedom-of-choice plan did not in any way abolish the official discrimination policy of that school board, that it was a sham insofar as the claim of eliminating the dual school system.

The standard they established is one which we might remind ourselves of today. They said on pages 439 and 440 of that opinion:

> We do not hold that "freedom of choice" can have no place in such a plan. We do not hold that a "freedom-of-choice" plan might of itself be unconstitutional, although that argument has been urged upon us. Rather, all we decide today is that in desegregating a dual system a plan utilizing "freedom of choice" is not an end in itself. As Judge Sobeloff has put it,
>
> " 'Freedom of choice' is not a sacred talisman; it is only a means to a constitutionally required end—the abolition of the system of segregation and its effects. If the means prove effective, it is acceptable, but if it fails to undo segregation, other means must be used to achieve this end. The school officials have the continuing duty to take whatever action may be necessary to creat a 'unitary, nonracial system.' "

That is the decision of the Supreme Court. The Whitten amendment would, in effect, say that where unconstitutional segregation continues, HEW must accept the freedom-of-choice plan, even though it is not effective in ending discrimination.

Under the Green case, then, the law is very clear that freedom of choice by itself is not constitutional unless it is effective in eliminating discrimination.

The Court in the Green case found that the record of freedom-of-choice plans shows that they are ineffective.

The Green case cited the Civil Rights Commission study which found that these plans require affirmative action by both Negro and white parents and children and that such action is deterred because of threats of violence, economic reprisals, harassment, and other types of retaliation for exercising freedom of choice.

In a sense it is ironic that those who now favor freedom of choice bitterly opposed these plans at first because they saw "freedom of choice" as a threat to the dual system, albeit of a token nature; only when the Supreme Court made it clear that token desegregation was no longer acceptable did the South embrace freedom of choice as a means of preventing significant desegregation. If one believes in law and order, if one believes in enforcing the orders of the Supreme Court, one must oppose the Whitten amendments and the Jonas amendment.

Section 410, of the so-called Jonas amendment, would go even further. It would require school districts as a condition to receiving Federal funds to adopt freedom-of-choice assignment plans.

In other words, the Whitten amendment does not require a school district to pursue a freedom-of-choice strategy, but it will permit them to do so and claim that they are acting lawfully.

The Jonas amendment goes further and says that they must have a freedom-of-choice plan or lose Federal funds. Thus, even if a district voluntarily chose to assign students in order to desegregate its schools, the district would lose Federal funds under the Jonas amendment.

Where a school district was under court order to desegregate by a more effective method than freedom of choice, the district would have to choose between losing funds under section 410 or violating that court order.

Mr. President, we have heard much in this debate about quality education, as though there were an answer which achieved quality education in the midst of racial isolation imposed by illegal, unconstitutional means. The Senate has debated for some time the question of de facto segregation that arises from residential living patterns.

The PRESIDING OFFICER. The time of the Senator from Minnesota has expired.

Mr. MATHIAS. Mr. President, I yield 5 additional minutes to the Senator from Minnesota.

Mr. MONDALE. We are dealing here with legal violations, with unconstitutional discrimination of school systems which have an official policy of sorting children out on the basis of color. There has been some suggestion that not much of that problem remains. In fact, most of the tough, difficult problems remain.

Latest available facts show that some 2 million black children in the South were still attending all-black schools as late as 1968. These children were still being discriminated against and required to attend insulting institutions which say there is something wrong with being black. It is the official policy of these school boards to separate children on the basis of race.

In Alabama, 86 percent of the black children attend all-black schools.

In Arkansas, 71 percent of the black children go to all-black schools. By that I mean a school which is attended by not a single white child.

In Georgia, 76 percent of the black children go to all-black schools.

In Louisiana, 82 percent of the black children go to all-black schools.

In Mississippi, 88 percent of the black children go to all-black schools.

In South Carolina, 79 percent of the black children go to all-black schools.

The implication that de jure segregation is now an issue of the past and lies behind us, that everyone is now integrated, and that all we are dealing with is de facto segregation is not the case in this country today. While we have made progress in eliminating official discrimination, the main battle remains ahead of us. As of 1968, more than 2 million black schoolchildren in the South, still attended wholly segregated institutions.

Mr. President, to abandon this fight today——

Mr. TALMADGE. Mr. President, will the Senator yield at that point?

Mr. MONDALE. I yield.

Mr. TALMADGE. Is the Senator aware of the fact that HEW's own figures state that of the 100 largest school districts in the United States, 55 of them are not in the South, and that 40 of these 55 have some 80 percent of their Negro children in segregated schools?

Mr. MONDALE. I strongly believe in the proposition that official discrimination, wherever it is found, must fall under the edicts of the Supreme Court. I do not agree for a moment that this is just a southern problem. There is official discrimination elsewhere; for example, in Los Angeles, Pasadena, South Holland, Ill., Wichita, Kans.; Ferndale, Mich.; and other places in the North and West courts and HEW have found official discrimination. I stand behind the courts and HEW in eliminating official discrimination wherever it is found.

Mr. TALMADGE. Who spoke of official discrimination? There has been no such thing as official discrimination since 1954. That was outlawed by the Brown case. Is it the Senator's idea that wherever you find a large percentage of white students in one school or a large percentage of black students in another school, that the State government, Federal Government, or local community should step in and haul those students around like cattle to attempt to achieve some kind of racial balance?

Mr. MONDALE. It is the opinion of the Senator from Minnesota that wherever a school board as a matter of policy separates children on the basis of color, such a policy must be ended; and that the court has the authority to require school districts to pursue a host of remedies designed to disabuse the district of that policy. Those remedies could include location of schools, redesigning of district boundaries, pairing schools, as well as a policy of busing part of the students. It could include a host of remedies designed to create a school system which does not officially separate children on the basis of color.

Mr. TALMADGE. Mr. President, will the Senator yield further?

Mr. MONDALE. I yield.

Mr. TALMADGE. As the Senator knows, according to HEW figures, 95 percent of the students in the District of Columbia are black, and according to HEW statistics they have less than 1 percent integration here. How would the Senator solve that problem?

Mr. MONDALE. I am glad the Senator from Georgia asked that question. Is it the position of the Senator from Georgia

that the school board of the District of Columbia officially separates children?

Mr. TALMADGE. I do not think they officially separate them anywhere. They cannot and they could not since 1954.

Mr. MONDALE. I have two children in the John Eaton School. There are about 25 percent blacks there. The children are bused in to that school and it works.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MONDALE. Mr. President, will the Senator yield to me for 1 additional minute?

Mr. MATHIAS. I yield 1 minute to the Senator from Minnesota.

Mr. MONDALE. My son goes to the Gordon Junior High School, which is predominantly black, and judicial notice can be taken of the fact that my son is white. I do not think there is any serious argument, at least to my knowledge, that the School Board of the District of Columbia officially discriminates.

Mr. TALMADGE. I do not think they do, but what is the Senator going to do about it? The Senator is talking about racial balance everywhere. No school board discriminates. They cannot do it under the law.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MATHIAS. Mr. President, I yield 2 additional minutes to the Senator from Minnesota.

Mr. MONDALE. I find that good news—but I do not know if it is true that there is no longer any school board that officially discriminates. I do not know how Mississippi still had 88 percent of its black students attending all black schools in 1968.

Mr. TALMADGE. I have seen the statistics with respect to St. Paul and Minneapolis. As the Senator knows, there is only a 1.5 percent Negro population in Minnesota, so Minnesota does not have a great many Negroes to absorb in any of its schools. But you have schools which are virtually all black in your State.

Mr. MONDALE. In Minneapolis 70 percent of our black students attend predominantly white schools, whereas 29 percent attend schools which are in the 50- to 90-percent minority bracket.

Mr. TALMADGE. What about the other 30 percent? Are you going to haul them around and get a better mix?

Mr. MONDALE. The key issue here is whether we are going to eliminate official discrimination as a violation of the law. The second issue is: What do we do with racial imbalance that results from residential living patterns?

Mr. TALMADGE. We have those residential living patterns in the South.

Mr. MONDALE. I have no doubt that when we eliminate official discrimination, we will find de facto segregation in the North and in the South.

We created a special committee to try to focus on the unresolved issue of what we do with racial isolation. The strategy of the Whitten amendments and Jonas amendment is to paralyze HEW's efforts to eliminate official discrimination. I hope we sort out the problems of racial isolation.

We closed a school in Minneapolis 5 years ago which was 90 percent black and those students were dispersed to predominantly white schools as part of our efforts to eliminate racial imbalance.

I commend Minneapolis officials for that effort.

Mr. ELLENDER. Mr. President, will the Senator yield?

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MATHIAS. Mr. President, I am glad to yield 2 additional minutes to the Senator from Minnesota so that the distinguished Senator from Louisiana may pursue his question.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. ELLENDER. Will the Senator give us the date of the figures? With respect to Louisiana, Arkansas, and the States the Senator mentioned, what is the date?

Mr. MONDALE. The date is the fall of 1968. This is a report issued by the Department of HEW, released on January 4, 1970, by Secretary of Health, Education, and Welfare Robert Finch.

Mr. President, I ask unanimous consent that this report may be printed in the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

Secretary of Health, Education and Welfare Robert Finch said an analysis of 1968 national school survey statistics and 1969 field audits indicate that school districts implementing voluntary desegregation plans are making significant and effective progress in providing an equal educational opportunity.

In contrast with these findings, the 1968 survey displayed a shockingly low desegregation ratio on a national basis, with only 23.4 percent of the Negro students in the Nation's public elementary and secondary schools attending schools of predominantly white (non-minority) enrollment, and with 61 percent of the Negro students isolated in 95 through 100 percent minority schools, Secretary Finch said. (Table 1–A)

The survey of ethnic data in school, the first of its kind taken on a national basis, was conducted in the fall of 1968. It covered all school systems with enrollments of more than 3,000 and a sampling of smaller districts in every state except Hawaii, and represented a total of 43,353,567 students. HEW's Office for Civil Rights collected the data, and completed the basic compilation last week, on a state, regional and selected urban district basis.

In releasing the information, Secretary Finch stated:

"While it should be recognized that a number of factors must be evaluated in determining the overall quality of education going to racially isolated children, these figures are indicative of the progress that has been made in providing equal educational opportunity for thousands of children. But this survey also points up the extensiveness of the problem on a nationwide basis and the need to provide effectively for the educational rights and needs of the disadvantaged no matter where they may be.

"This Department is committed to equal and quality education for all children in this Nation. It is our hope other Federal agencies along with this Department will make use of this data, not only to determine where further review and action under civil rights laws may be required nationally, but also as an indication of where further assistance can be provided in the effort to improve educational opportunity."

In 1968, there were 55 school districts which submitted acceptable plans under Title VI, which called for desegregation in the 1968–69 school year. Of the 35,815 Negro students in these districts, 31,089, or 86.8 percent, attended schools of predominantly white enrollment. This compared with the 23.4 percent desegregation figure nationally, the 18.4 percent figure for 11 Southern states, and the 10.5 percent figure for the 5 Southern states of Alabama, Georgia, Louisiana, Mississippi and South Carolina, and indicates the value of the Title VI program.

In 1969, the indicated volume of desegregation in formerly dual school system states accelerated significantly, with more than 200 Title VI plans calling for complete desegregation in the 1969–70 school year accepted, and over 100 calling for substantial desegregation steps in the same year. The average student population in these districts was considerably higher than in 1968. Although precise desegregation ratios for 1969 have not yet been collected or compiled for all districts, some early results of audits in certain states show that among 20 districts in Florida which submitted plans for 1969, the desegregation rate climbed from 45.1 percent in 1968 to 63.5 percent this year; among 31 districts in Georgia with acceptable plans this year, the rate climbed from 26.6 percent to 59.7 percent, and among 14 districts in Mississippi, the rate climbed from 31.7 to 69.1 percent.

HEW administers Title VI of the 1964 Civil Rights Act where it applies to schools, prohibiting Federal financial assistance to any district which discriminates on grounds of race, color or national origin. Districts found to be discriminating have been able to retain their Federal funding by submitting acceptable desegregation plans.

Leon E. Panetta, Director of the Office for Civil Rights, said, "Although desegregation ratios have improved in certain former dual system states during the current 1969 school year, these 1968 figures do present what can be considered the basic nationwide picture today."

Data was compiled in such a way as to measure the extent to which American Indian, Negro, Oriental and Spanish-surnamed minorities attended school with students of their own minority plus other minorities, and compared this rate with their enrollment in schools of 50 percent or more white, non-minority makeup.

Mr. Panetta said:

"With the aid of thousands of cooperating state and local school officials who submitted raw data, we can see a stark portrayal of ethnic isolation in schools. Whether a child is isolated with his own or other minorities, he is still likely to suffer educationally as a result of this segregation, according to numerous education studies.

"It would be our hope that this information, which will eventually be published on a district-by-district basis, would also be of assistance to state and local agencies and organizations engaged in breaking down barriers of racial isolation in education."

Of the Spanish-surnamed students in public schools, 45.3 percent attended a school of predominantly non-minority enrollment, while 16.6 percent were in 95 through 100 percent minority schools. (Table 1–B)

American Indians surveyed attended school at a rate of 61.7 percent in schools of predominantly white, non-minority enrollment, while 16.7 percent were in 95 through 100 percent minority schools. These 177,464 American Indian students did not include some 52,400 American Indian students who attended schools administered by the Interior Department's Bureau of Indian Affairs. (Table 1–C)

Orientals attended predominantly non-minority schools at a rate of 72.2 percent, and attended 90 through 100 percent minority schools at a rate of 8.7 percent. (Table 1–D)

When the white, non-minority enrollment patterns are compared with minorities, data shows that 2.1 percent of the non-minority students are in 50 percent or more minority schools, while 16.5 percent are in 100 percent white schools. 65.6 percent are in 95 through 100 percent white schools, however. (Table 1–E)

Other findings were made on a region-by-region and state-by-state basis. Also, data on Negroes from the 100 largest school systems were singled out for special study and released at this time, as were data on Spanish-surnamed students from certain appropriate districts of the 100 largest. (Tables 2–A, B & C; 3 A & B; 4 A & B).

In a regional study of Negro segregation, for example, the study showed that there is a great variation in the number of Negroes attending 100 percent minority schools, from six heavily industrial Northern states, where 15.4 percent of the Negroes attended 100 percent minority schools, to six Border states and the District of Columbia, where 25.2 percent of the Negroes attended 100 percent minority schools, to five deep Southern states, where 81.9 percent of the Negroes attended 100 percent minority schools. (This last figure is based on 431 districts in five states out of 4,477 districts in 17 Southern and Border states.) (Table 2–A)

The Office for Civil Rights is preparing all of the data gathered from school districts in the 1968 survey for publication, and expects to prepare additional tables lending themselves to additional analysis of minority school enrollment patterns. In the current school year, a selective survey will be made, tailored to fit the needs of civil rights compliance agencies of the Government. In 1970–71, however, another nationwide survey is intended, which will permit comparison with the 1968 survey.

TABLE 1A.—NEGROES BY STATE

[Number [1] and percentage attending school at increasing levels of isolation, fall, 1968 elementary and secondary school survey]

State	Total number of students	Total Number of Negro students	Percent of total students	Negroes attending minority schools: 0 to 49.9 percent		50 to 100 percent		95 to 100 percent		99 to 100 percent		100 percent	
				Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Continental United States	43,353,567	6,282,173	14.5	1,467,291	23.4	4,814,881	76.6	3,832,843	61.0	3,331,404	53.0	2,493,398	39.7
Alabama	770,523	269,248	34.9	22,308	8.3	246,940	91.7	244,693	90.9	243,269	90.4	230,448	85.6
Alaska	71,797	2,119	3.0	2,119	100.0	0	0	0	0	0	0	0	0
Arizona	366,459	15,783	4.3	5,272	33.4	10,511	66.6	4,349	27.6	3,344	21.2	790	5.0
Arkansas	415,613	106,533	25.6	24,091	22.6	82,442	77.4	78,901	74.1	77,703	72.9	75,797	71.1
California	4,477,381	387,978	8.7	87,255	22.5	300,723	77.5	185,562	47.8	115,890	29.9	27,986	7.2
Colorado	519,092	17,797	3.4	5,432	30.5	12,365	69.5	8,017	45.0	2,862	16.1	0	0
Connecticut	632,361	52,550	8.3	22,768	43.3	29,782	56.7	9,601	18.3	2,254	4.3	328	.6
Delaware	123,863	24,016	19.4	13,025	54.2	10,991	45.8	5,177	21.6	953	4.0	0	0
District of Columbia	148,725	139,006	93.5	1,253	.9	137,753	99.1	123,939	89.2	95,608	68.8	38,701	27.8
Florida	1,340,665	311,491	23.2	72,333	23.2	239,158	76.8	224,729	72.1	215,824	69.3	184,074	59.1
Georgia	1,001,245	314,918	31.5	44,201	14.0	270,717	86.0	262,689	83.4	259,891	82.5	240,532	76.4
Idaho	174,472	415	.2	415	100.0	0	0	0	0	0	0	0	0
Illinois	2,252,321	406,351	18.0	55,367	13.6	350,984	86.4	294,066	72.4	252,225	62.1	156,869	38.6
Indiana	1,210,539	106,178	8.8	31,833	30.0	74,345	70.0	46,208	43.5	37,664	35.5	13,597	12.8
Iowa	651,705	9,567	1.5	6,994	73.1	2,573	26.9	340	3.6	340	3.6	0	0
Kansas	518,733	30,834	5.9	16,479	53.4	14,355	46.6	9,820	31.8	6,264	20.3	2,327	7.5
Kentucky	695,611	63,996	9.2	34,389	53.7	29,606	46.3	17,025	26.6	9,021	14.1	3,342	5.2
Louisiana	817,000	317,268	38.8	28,177	8.9	289,091	91.1	279,614	88.1	278,620	87.8	259,897	81.9
Maine	220,336	1,429	.6	389	27.2	1,040	72.8	0	0	0	0	0	0
Maryland	859,440	201,435	23.4	62,670	31.1	138,765	68.9	105,886	52.6	92,030	45.7	62,898	31.2
Massachusetts	1,097,221	46,675	4.3	23,916	51.2	22,759	48.8	8,558	18.3	4,936	10.6	79	0.2
Michigan	2,073,369	275,878	13.3	56,840	20.6	219,038	79.4	128,116	46.4	78,319	28.4	24,720	9.0
Minnesota	856,506	9,010	1.1	7,116	79.0	1,894	21.0	361	4.0	0	0	0	0
Mississippi	456,532	223,784	49.0	15,000	6.7	208,784	93.3	207,515	92.7	206,736	92.4	197,447	88.2
Missouri	954,596	138,412	14.5	33,996	24.6	104,416	75.4	91,355	66.0	77,676	56.1	46,285	33.4
Montana	127,059	102	.1	102	100.0	0	0	0	0	0	0	0	0
Nebraska	266,342	12,340	4.6	3,364	27.3	8,976	72.7	4,321	35.0	674	5.5	0	0
Nevada	119,180	9,189	7.7	4,883	53.1	4,306	46.9	3,626	39.5	699	7.6	0	0
New Hampshire	132,212	537	.4	537	100.0	0	0	0	0	0	0	0	0
New Jersey	1,401,925	208,481	14.9	70,628	33.9	137,853	66.1	68,434	32.8	37,827	18.1	15,245	7.3
New Mexico	271,040	5,658	2.1	2,712	47.9	2,946	52.1	901	15.9	574	10.1	394	7.0
New York	3,364,090	473,253	14.1	152,868	32.3	320,385	67.7	169,401	35.8	100,899	21.3	35,637	7.5
North Carolina	1,199,481	352,151	29.4	99,679	28.3	252,472	71.7	229,393	65.1	227,057	64.5	207,752	59.0
North Dakota	115,995	458	.4	458	100.0	0	0	0	0	0	0	0	0
Ohio	2,400,296	287,440	12.0	79,762	27.7	207,678	72.3	123,127	42.8	93,775	32.6	37,861	13.2
Oklahoma	543,501	48,861	9.0	18,472	37.8	30,389	62.2	23,610	48.3	18,715	38.3	8,437	17.3
Oregon	455,141	7,413	1.6	4,689	63.3	2,724	36.7	0	0	0	0	0	0
Pennsylvania	2,296,011	268,514	11.7	73,901	27.5	194,614	72.5	118,449	44.1	87,064	32.4	11,756	4.4
Rhode Island	172,264	8,047	4.7	7,196	89.4	851	10.6	0	0	0	0	0	0
South Carolina	603,542	238,063	39.4	33,811	14.2	204,225	85.8	200,188	84.1	199,752	83.9	188,666	79.3
South Dakota	146,407	384	.3	360	93.7	24	6.3	12	3.1	0	0	0	0
Tennessee	887,469	184,692	20.8	39,240	21.2	145,453	78.8	132,208	71.6	123,468	66.9	108,425	58.7
Texas	2,510,358	379,813	15.1	95,931	25.3	283,882	74.7	239,540	63.1	208,021	54.8	165,249	43.5
Utah	303,152	1,486	.5	1,098	73.9	388	26.1	0	0	0	0	0	0
Vermont	73,570	90	.1	90	100.0	0	0	0	0	0	0	0	0
Virginia	1,041,057	245,026	23.5	65,922	26.9	179,104	73.1	167,172	68.2	161,321	65.8	142,209	58.0
Washington	791,260	19,145	2.4	12,299	64.2	6,846	35.8	0	0	0	0	0	0
West Virginia	404,582	20,431	5.0	16,763	82.0	3,668	18.0	1,157	5.7	841	4.1	841	4.1
Wisconsin	942,441	37,289	4.0	8,406	22.5	28,883	77.5	14,783	39.6	9,288	24.9	4,819	12.9
Wyoming	79,091	665	.8	482	72.5	183	27.5	0	0	0	0	0	0

[1] Minute differences between sum of numbers and totals are due to computer rounding.

TABLE 1B.—SPANISH SURNAMED AMERICANS BY STATE

[Number [1] and percentage attending school at increasing levels of isolation, fall 1968 elementary and secondary school survey]

State	Total number of students	Total number of Spanish-American students	Percent of total students	Spanish-surnamed Americans attending minority schools: 0 to 49.5 percent		50 to 100 percent		80 to 100 percent		95 to 100 percent		100 percent	
				Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Continental United States	43,353,567	2,002,776	4.6	906,919	45.3	1,095,857	54.7	634,891	31.7	331,781	16.6	38,077	1.9
Alabama	770,523	24	0	24	100.0	0	0	0	0	0	0	0	0
Alaska	71,797	479	.7	474	99.0	5	1.0	0	0	0	0	0	0
Arizona	366,459	71,748	19.6	34,402	47.9	37,346	52.1	15,012	20.9	7,376	10.3	762	1.1
Arkansas	415,613	539	.1	527	97.8	12	2.2	9	1.7	9	1.7	9	1.7
California	4,477,381	646,282	14.4	393,997	61.0	252,285	39.0	118,433	18.3	55,419	8.6	1,529	.2
Colorado	519,092	71,348	13.7	45,174	63.3	26,174	36.7	9,971	14.0	2,070	2.9	0	0
Connecticut	632,361	15,670	2.5	7,627	48.7	8,043	51.3	4,134	26.4	2,582	16.5	12	.1
Delaware	123,863	245	.2	154	62.9	91	37.1	2	.8	2	.8	0	0
District of Columbia	148,725	662	.4	256	38.7	406	61.3	289	43.7	227	34.3	10	1.5

District	Total number of students	Total number of Spanish-American students	Percent of total students	Spanish-surnamed Americans attending minority schools: 0 to 49.5 percent		50 to 100 percent		80 to 100 percent		95 to 100 percent		100 percent	
				Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Florida	1,340,665	52,628	3.9	26,287	49.9	26,341	50.1	9,479	18.0	3,275	6.2	240	0.5
Georgia	1,001,245	1,370	.1	786	57.4	584	42.6	578	42.2	578	42.2	578	42.2
Idaho	174,472	3,338	1.9	3,322	99.5	16	.5	16	.5	0	0	0	0
Illinois	2,252,321	68,917	3.1	36,361	52.8	32,556	47.2	16,282	23.6	3,314	4.8	249	.4
Indiana	1,210,539	13,622	1.1	7,093	52.1	6,529	47.9	2,944	21.6	242	1.8	34	.2
Iowa	651,705	2,283	.4	2,271	99.5	12	.5	1	0	0	0	0	0
Kansas	518,733	8,219	1.6	7,601	92.5	618	7.5	56	.7	16	.2	0	0
Kentucky	695,611	136	0	135	99.3	1	.7	0	0	0	0	0	0
Louisiana	817,000	2,111	.3	1,671	79.2	440	20.8	75	3.6	23	1.1	23	1
Maine	220,336	478	.2	85	17.8	393	82.2	367	76.7	0	0	0	0.1
Maryland	859,440	2,078	.2	2,073	99.8	5	.2	0	0	0	0	0	0
Massachusetts	1,097,221	8,733	.8	6,557	75.1	2,176	24.9	650	7.4	97	1.1	0	0
Michigan	2,073,369	24,819	1.2	21,169	85.3	3,650	14.7	1,667	6.7	766	3.1	113	.5
Minnesota	856,506	3,418	.4	3,397	99.4	21	.6	1	0	1	0	0	0
Mississippi	456,532	327	.1	321	98.2	6	1.8	0	0	0	0	0	0
Missouri	954,596	1,393	.1	1,368	98.2	25	1.8	8	.6	4	.3	2	.1
Montana	127,059	910	.7	906	99.6	4	.4	1	.1	0	0	0	0
Nebraska	266,342	3,722	1.4	3,439	92.4	283	7.6	8	.2	5	.1	0	0
Nevada	119,180	3,633	3.0	3,613	99.4	20	.6	9	.2	8	.2	0	0
New Hampshire	132,212	147	.1	147	100.0	0	0	0	0	0	0	0	0
New Jersey	1,401,925	46,063	3.3	20,291	44.1	25,771	55.9	12,550	27.2	5,261	11.4	430	.9
New Mexico	271,040	102,994	38.0	27,494	26.7	75,500	73.3	34,136	33.1	10,336	10.0	2,704	2.6
New York	3,364,090	263,799	7.8	46,307	17.6	217,492	82.4	164,622	62.4	97,628	37.0	5,087	1.9
North Carolina	1,199,481	482	0	465	96.5	17	3.5	3	.6	2	.4	2	.4
North Dakota	115,995	230	.2	230	100.0	0	0	0	0	0	0	0	0
Ohio	2,400,296	16,031	.7	13,836	86.3	2,195	13.7	1,116	7.0	96	.6	15	.1
Oklahoma	543,501	3,647	.7	3,540	97.1	107	2.9	22	.6	16	.4	0	0
Oregon	455,141	4,502	1.0	4,474	99.4	28	.6	12	.3	0	0	0	0
Pennsylvania	2,296,011	11,849	.5	6,008	50.7	5,842	49.3	4,297	36.3	1,767	14.9	12	.1
Rhode Island	172,264	490	.3	313	63.9	177	36.1	0	0	0	0	0	0
South Carolina	603,542	208	0	206	99.0	2	1.0	0	0	0	0	0	0
South Dakota	146,407	273	.2	261	95.6	12	4.4	12	4.4	2	4.4	4	1.5
Tennessee	887,469	411	0	398	96.8	13	3.2	7	1.7	2	.5	1	.2
Texas	2,510,358	505,214	20.1	139,877	27.7	365,337	72.3	237,136	46.9	140,486	27.8	26,164	5.2
Utah	303,152	9,839	2.2	8,665	88.1	1,174	11.9	325	3.3	0	0	0	0
Vermont	73,570	34	0	34	100.0	0	0	0	0	0	0	0	0
Virginia	1,041,057	2,222	.2	2,189	98.5	33	1.5	3	.1	3	.1	0	0
Washington	791,260	12,692	1.6	11,150	87.9	1,542	12.1	35	.3	0	0	0	0
West Virginia	404,582	251	.1	249	99.2	2	.8	2	.8	0	0	0	0
Wisconsin	942,441	7,760	.8	6,171	79.5	1,589	20.5	620	8.0	157	2.0	97	1.3
Wyoming	79,091	4,504	5.7	3,524	78.2	980	21.8	0	0	0	0	0	0

[1] Minute differences between sum of numbers and totals are due to computer rounding.

TABLE 1C.—AMERICAN INDIANS BY STATE

[Number [1] and percentage attending school at increasing levels of isolation, fall, 1968, elementary and secondary school survey]

State	Total number of students	Total number of American Indian students	Percent of total students	American Indians attending minority schools: 0 to 49.9 percent		50 to 100 percent		80 to 100 percent		95 to 100 percent		100 percent	
				Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Continental United States	43,353,567	177,464	0.4	109,540	61.7	67,924	38.3	53,528	30.2	29,654	16.7	11,177	6.3
Alabama	770,523	39	0	6	15.4	33	84.6	33	84.6	0	0	0	0
Alaska	71,797	6,808	9.5	4,866	71.5	1,942	28.5	1,768	26	1,192	17.5	607	8.9
Arizona	366,459	14,431	3.9	5,827	40.4	8,604	59.6	6,781	47	388	2.7	7	0
Arkansas	415,613	414	.1	414	100	0	0	0	0	0	0	0	0
California	4,477,381	13,986	.3	12,284	87.8	1,702	12.2	599	4.3	182	1.3	7	.1
Colorado	519,092	1,366	.3	1,211	88.6	155	11.4	66	4.8	11	.8	0	0
Connecticut	632,361	204	0	194	95.1	10	4.9	4	2	0	0	0	0
Delaware	123,863	10	0	10	100	0	0	0	0	0	0	0	0
District of Columbia	148,725	31	0	6	19.4	25	80.6	23	74.2	10	32.3	0	0
Florida	1,340,665	1,455	.1	1,389	95.5	66	4.5	20	1.4	8	.5	2	.1
Georgia	1,001,245	323	0	189	58.6	134	41.4	134	41.4	134	41.4	134	41.4
Idaho	174,472	1,699	1	1,564	92.1	135	7.9	0	0	0	0	0	0
Illinois	2,252,321	1,804	.1	1,602	88.8	203	11.2	60	3.3	28	1.6	5	.3
Indiana	1,210,539	544	0	464	85.3	80	14.7	14	2.6	8	1.5	5	.9
Iowa	651,705	418	.1	415	99.3	3	.7	0	0	0	0	0	0
Kansas	518,733	1,392	.3	1,374	98.7	18	1.3	2	.1	1	.1	0	0
Kentucky	695,611	47	0	46	97.9	1	2.1	0	0	0	0	0	0
Louisiana	817,000	213	0	202	94.8	11	5.2	0	0	0	0	0	0
Maine	220,336	1,132	.5	332	29.3	800	70.7	467	41.2	67	5.9	67	5.9
Maryland	859,440	169	0	169	100	0	0	0	0	0	0	0	0
Massachusetts	1,097,221	430	0	407	94.7	23	5.3	11	2.6	5	1.2	0	0
Michigan	2,073,369	4,404	.2	4,267	96.9	137	3.1	75	1.7	44	1	4	.1
Minnesota	856,506	5,748	.7	5,702	99.2	46	.8	0	0	0	0	0	0
Mississippi	456,532	112	0	104	92.9	8	7.1	3	2.7	3	2.7	3	2.7
Missouri	954,596	278	0	264	95	14	5	8	2.9	6	2.2	4	1.4
Montana	172,059	5,015	3.9	2,472	49.3	2,543	50.7	2,275	45.4	325	6.5	81	1.6
Nebraska	266,342	824	.3	743	90.2	81	9.8	32	3.9	13	1.6	0	0
Nevada	119,180	2,454	2.1	1,870	76.2	584	23.8	235	9.6	64	2.6	64	2.6
New Hampshire	132,212	29	0	29	100	0	0	0	0	0	0	0	0
New Jersey	1,401,925	311	0	258	82.9	53	17.1	10	3.2	4	1.3	1	.3
New Mexico	271,040	19,742	7.3	3,048	15.4	16,694	84.6	12,241	62.0	3,420	17.3	1,638	8.3
New York	3,364,090	5,710	.2	3,795	66.5	1,915	33.5	1,791	31.4	1,738	30.4	557	9.8
North Carolina	1,199,481	14,021	1.2	2,916	20.8	11,105	79.2	10,587	75.5	10,585	75.5	4,272	30.5
North Dakota	115,995	1,523	1.3	1,165	76.5	358	23.5	0	0	0	0	0	0.5
Ohio	2,400,296	736	0	684	92.9	52	7.1	31	4.2	9	1.2	4	
Oklahoma	543,501	24,003	4.4	23,630	98.4	373	1.6	70	.3	18	.1	6	0
Oregon	455,141	3,601	.8	3,108	86.3	492	13.7	487	13.5	0	0	0	0
Pennsylvania	2,296,011	411	0	409	99.5	2	.5	1	.2	0	0	0	0
Rhode Island	172,264	143	.1	143	100.0	0	0	0	0	0	0	0	0
South Carolina	603,542	404	.1	341	84.4	63	15.6	62	15.3	62	15.3	62	15

TABLE 1C.—AMERICAN INDIANS BY STATE—Continued

[Number [1] and percentage attending school at increasing levels of isolation, fall, 1968, elementary and secondary school survey]

State	Total number of students	Total number of American Indian students	Percent of total students	American Indians attending minority schools									
				0 to 49.9 percent		50 to 100 percent		80 to 100 percent		95 to 100 percent		100 percent	
				Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
South Dakota	146,407	16,533	11.3	3,619	21.9	12,915	78.1	11,233	67.9	8,704	52.6	1,700	10.3
Tennessee	887,469	254	0	252	99.2	2	.8	0	0	0	0	0	0
Texas	2,510,358	3,813	.2	1,493	39.2	2,319	60.8	2,175	57	2,070	54.3	1,939	50.9
Utah	303,152	3,848	1.3	3,334	86.6	514	13.4	174	4.5	0	0	0	0
Vermont	73,570	2	0	2	100	0	0	0	0	0	0	0	0
Virginia	1,041,057	755	.1	624	82.7	131	17.3	121	16	115	15.2	0	0
Washington	791,260	8,736	1.1	7,404	84.8	1,332	15.2	83	1	0	0	0	0
West Virginia	404,582	86	0	86	100	0	0	0	0	0	0	0	0
Wisconsin	942,441	4,977	.5	3,977	79.9	1,000	20.1	613	12.3	440	8.8	8	.2
Wyoming	79,091	2,073	2.6	826	39.8	1,247	60.2	1,240	59.8	0	0	0	0

[1] Minute differences between sum of numbers and totals are due to computer rounding.

TABLE 1D.—ORIENTALS BY STATE

[Number [1] and percentage attending school at increasing levels of isolation, fall, 1968 elementary and secondary school survey]

State	Total number of students	Total Number of Oriental students	Percent of total students	Orientals attending minority schools									
				0 to 49.9 percent		50 to 100 percent		80 to 100 percent		90 to 100 percent		100 percent	
				Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Continental United States	43,353,567	194,022	0.4	140,069	72.2	53,953	27.8	24,898	12.8	16,821	8.7	153	0.1
Alabama	770,523	46	0	46	100.0	0	0	0	0	0	0	0	0
Alaska	71,797	424	.6	422	99.4	3	.6	0	0	0	0	0	0
Arizona	366,459	1,971	.5	1,651	83.7	321	16.3	81	4.1	47	2.4	0	0
Arkansas	415,613	268	.1	267	99.6	1	.4	1	.4	1	.4	1	.4
California	4,477,381	105,656	2.4	68,578	64.9	37,078	35.1	15,287	14.5	9,554	9.0	37	0
Colorado	519,092	2,832	.5	2,567	90.6	265	9.4	135	4.8	113	4.0	0	0
Connecticut	632,361	1,146	.2	1,057	92.2	89	7.8	45	3.9	24	2.1	0	0
Delaware	132,863	85	.1	85	100.0	0	0	0	0	0	0	0	0
District of Columbia	148,725	746	.5	298	39.9	448	60.1	288	38.6	266	35.7	24	3.2
Florida	1,340,665	1,439	.1	1,279	88.9	160	11.1	43	3.0	22	1.5	5	.3
Georgia	1,001,245	750	.1	735	98.0	15	2.0	6	.8	5	.7	0	0
Idaho	174,472	873	.5	873	100.0	0	0	0	0	0	0	0	0
Illinois	2,252,321	6,893	.3	5,888	85.4	1,006	14.6	427	6.2	358	5.2	17	.2
Indiana	1,210,539	884	.1	836	94.6	48	5.4	18	2.0	4	.5	4	.5
Iowa	651,705	463	.1	443	95.7	20	4.3	0	0	0	0	0	0
Kansas	518,733	1,094	.2	1,048	95.8	46	4.2	2	.2	1	.1	1	.1
Kentucky	695,611	295	0	293	99.3	2	.7	1	.3	1	.3	0	0
Louisana	817,000	379	0	358	94.5	21	5.5	2	.5	2	.5	1	.3
Maine	220,336	518	.2	125	24.1	393	75.9	333	64.3	0	0	0	0
Maryland	859,440	1,687	.2	1,684	99.8	3	.2	0	0	0	0	0	0
Massachusetts	1,097,221	4,036	.4	3,057	75.7	979	24.3	326	8.1	184	4.6	0	0
Michigan	2,073,369	3,837	.2	3,430	89.4	407	10.6	210	5.5	164	4.3	19	.5
Minnesota	856,506	1,479	.2	1,476	99.8	3	.2	0	0	0	0	0	0
Mississippi	456,532	384	.1	384	100.0	0	0	0	0	0	0	0	0
Missouri	954,596	1,027	.1	1,005	97.9	22	2.1	6	.6	5	.5	2	.2
Montana	127,059	301	.2	300	99.6	1	.4	0	0	0	0	0	0
Nebraska	266,342	420	.2	406	96.7	14	3.3	4	1.0	0	0	0	0
Nevada	119,180	672	.6	651	96.9	21	3.1	0	0	0	0	0	0
New Hampshire	132,212	157	.1	157	100.0	0	0	0	0	0	0	0	0
New Jersey	1,401,925	3,254	.2	2,915	89.6	339	10.4	122	3.7	106	3.3	1	0
New Mexico	271,040	553	.2	418	75.6	135	24.4	33	6.0	20	3.6	0	0
New York	3,364,090	19,620	.6	10,038	51.2	9,582	48.8	6,765	34.5	5,657	28.8	21	.1
North Carolina	1,199,481	442	0	434	98.2	8	1.8	6	1.4	6	1.4	4	.9
North Dakota	115,995	134	.1	134	100.0	0	0	0	0	0	0	0	0
Ohio	2,400,296	2,768	.1	2,586	93.4	182	6.6	73	2.6	49	1.8	7	.3
Oklahoma	543,501	1,032	.2	1,024	99.2	8	.8	2	.2	1	.1	0	0
Oregon	455,141	3,080	.7	3,063	99.4	17	.6	1	0	0	0	0	0
Pennsylvania	2,296,011	2,073	.1	1,992	96.1	81	3.9	25	1.2	12	.6	0	0
Rhode Island	172,264	417	.2	408	97.8	9	2.2	2	.5	2	.5	0	0
South Carolina	603,542	195	0	181	92.8	14	7.2	0	0	0	0	0	0
South Dakota	146,407	130	.1	126	96.9	4	3.1	0	0	0	0	0	0
Tennessee	887,469	567	.1	553	97.5	14	2.5	5	.9	3	.5	3	.5
Texas	2,510,358	3,679	.1	3,136	85.2	543	14.8	205	5.6	103	2.8	0	0
Utah	303,152	1,582	.5	1,560	98.6	22	1.4	4	.3	0	0	0	0
Vermont	73,570	27	0	27	100.0	0	0	0	0	0	0	0	0
Virginia	1,041,057	2,179	.2	2,125	97.5	54	2.5	20	.9	13	.6	4	.2
Washington	791,260	10,012	1.3	8,503	84.9	1,509	15.1	400	4.0	93	.9	0	0
West Virginia	404,582	224	.1	222	99.1	2	.9	2	.9	0	0	0	0
Wisconsin	942,441	1,044	.1	989	94.7	55	5.3	17	1.6	4	.4	2	.2
Wyoming	79,091	244	.3	235	96.3	9	3.7	0	0	0	0	0	0

[1] Minute differences between sum of numbers and totals are due to computer rounding.

TABLE 1E.—NONMINORITIES BY STATE

[Number [1] and percentage attending school at increasing levels of isolation, fall 1968 elementary and secondary school survey]

State	Total number of students	Total number of nonminority students	Percent of total students	Nonminority students attending nonminority schools: 0 to 49.9 percent		50 to 100 percent		95 to 100 percent		99 to 100 percent		100 percent	
				Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Continental United States	43,353,568	34,697,133	80.0	716,980	2.1	33,980,153	97.9	22,778,975	65.6	13,020,419	37.5	5,723,597	16.5
Alabama	770,523	501,166	65.0	548	.1	500,618	99.0	362,578	72.4	221,841	44.3	143,179	28.6
Alaska	71,797	61,967	86.3	171	.2	61,796	99.7	24,213	39.1	6,712	10.9	2,901	4.7
Arizona	366,459	262,526	71.6	17,403	6.6	245,124	93.4	69,370	26.5	10,561	4.1	180	.1
Arkansas	415,613	307,859	74.1	1,694	.5	306,165	99.4	173,813	56.4	112,556	36.5	80,713	26.2
California	4,477,381	3,323,478	74.2	150,581	4.5	3,172,896	95.5	833,852	25.1	42,612	1.3	5,697	.2
Colorado	519,092	425,749	82.0	12,668	3.0	413,081	97.0	190,548	44.8	35,754	8.4	6,925	1.6
Connecticut	632,361	562,791	89.0	9,833	1.7	552,958	98.3	427,543	76.0	210,606	37.5	38,569	6.9
Delaware	123,863	99,507	80.3	2,960	3.0	96,547	97.0	50,884	51.1	29,848	30.0	1,620	1.6
District of Columbia	148,725	8,280	5.6	3,636	44.0	4,644	56.1	0	0	0	0	0	0
Florida	1,340,665	973,652	72.6	17,243	1.7	956,409	98.2	456,994	47.0	205,256	21.1	94,543	9.7
Georgia	1,001,245	683,884	68.3	3,981	.6	679,903	99.4	418,925	61.3	212,901	31.2	110,478	16.2
Idaho	174,472	168,147	96.4	42	0	168,105	100.0	129,742	77.2	68,910	41.0	29,591	17.6
Illinois	2,252,321	1,768,355	78.5	37,801	2.1	1,730,554	97.9	1,316,576	74.5	800,461	45.3	374,814	21.2
Indiana	1,210,539	1,089,311	90.0	12,674	1.1	1,076,637	98.8	914,675	84.0	638,813	58.7	340,616	31.3
Iowa	651,705	638,973	98.0	1,273	.2	637,700	99.8	599,415	93.8	484,633	75.8	317,163	49.6
Kansas	518,733	477,194	92	2,426	.5	474,768	99.5	355,883	74.5	199,156	41.7	94,613	19.8
Kentucky	695,611	631,136	90.7	4,663	.6	626,474	99.3	450,063	71.3	316,831	50.2	216,345	34.3
Louisiana	817,000	497,029	60.8	4,090	.8	492,939	99.2	344,235	69.2	197,091	39.6	106,051	21.3
Maine	220,336	216,778	98.4	779	.3	215,999	99.6	215,267	99.3	187,085	86.3	135,625	62.6
Maryland	859,440	654,071	76.1	15,711	2.2	638,360	97.6	360,728	55.2	160,199	24.5	58,850	9.0
Massachusetts	1,097,221	1,037,347	94.5	6,243	.7	1,031,104	99.4	895,751	86.4	536,238	51.7	176,128	17.0
Michigan	2,073,369	1,764,431	85.1	32,131	1.8	1,732,300	98.2	1,401,544	79.5	779,516	44.2	177,832	10.0
Minnesota	856,506	836,851	97.7	1,119	.1	835,732	99.9	773,873	92.5	573,062	68.5	171,709	20.5
Mississippi	456,532	231,924	50.8	921	.5	231,003	99.6	142,096	61.3	59,850	25.8	28,042	12.1
Missouri	954,596	813,486	85.2	5,555	.6	807,931	99.3	657,022	80.8	463,951	57.1	253,429	31.2
Montana	127,059	120,731	95.0	320	.3	120,411	99.7	106,587	88.3	54,962	45.5	23,278	19.3
Nebraska	266,342	249,036	93.5	1,876	.7	247,160	99.2	208,412	83.7	137,304	55.1	71,845	28.8
Nevada	119,180	103,233	86.6	393	.3	102,839	99.6	41,154	39.8	8,085	7.8	2,066	2
New Hampshire	132,212	131,342	99.3	0	0	131,342	100.0	128,097	97.5	115,583	88	52,686	40.1
New Jersey	1,401,925	1,143,816	81.6	34,641	3.1	1,109,175	97.0	751,629	65.7	399,265	34.9	113,204	9.9
New Mexico	271,040	142,092	52.4	30,932	21.7	111,163	78.2	7,542	5.3	115	.1	115	.1
New York	3,364,090	2,601,708	77.3	94,803	3.5	2,506,905	96.4	1,703,424	65.5	1,023,966	39.4	322,509	12.4
North Carolina	1,199,481	832,394	69.4	11,427	1.3	820,957	98.6	312,697	37.6	146,254	17.6	74,751	9
North Dakota	115,995	113,650	98.0	334	.3	113,316	99.7	105,402	92.7	75,734	66.6	44,890	39.5
Ohio	2,400,296	2,093,321	87.2	32,264	1.5	2,061,057	98.5	1,669,103	79.8	1,135,032	54.3	444,999	21.3
Oklahoma	543,501	465,958	85.7	3,215	.6	462,742	99.3	216,910	46.6	100,948	21.7	41,899	9.0
Oregon	455,141	436,546	95.9	1,068	.2	435,477	99.8	372,845	85.4	139,223	39.9	29,582	6.8
Pennsylvania	2,296,011	2,013,163	87.7	29,976	1.5	1,983,186	98.5	1,653,112	82.1	1,151,592	57.2	556,899	27.7
Rhode Island	172,264	163,166	94.7	760	.4	162,406	99.5	130,635	80.0	90,980	55.7	30,577	18.7
South Carolina	603,542	364,699	60.4	1,888	.4	362,811	99.5	176,916	48.5	59,808	16.4	28,557	7.8
South Dakota	146,407	129,086	88.2	1,155	1.0	127,932	99.1	109,910	85.2	66,312	51.4	29,831	23.1
Tennessee	887,469	701,545	79.1	4,345	.5	697,200	99.4	468,365	66.8	267,844	38.2	175,182	25.0
Texas	2,510,358	1,617,840	64.4	102,128	6.3	1,515,713	93.7	650,276	40.3	190,959	11.9	38,043	2.4
Utah	303,152	286,396	94.5	1,019	.3	285,377	99.6	200,880	70.1	47,895	16.7	3,100	1.1
Vermont	73,570	73,416	99.8	0	0	73,416	100.0	73,416	100.0	70,500	96.0	47,592	64.8
Virginia	1,041,057	790,874	76.0	5,875	.7	785,017	99.3	427,117	54.0	176,972	22.4	85,438	10.8
Washington	791,260	740,675	93.6	5,309	.7	735,366	99.3	563,487	76.1	148,147	20.0	20,850	2.8
West Virginia	404,582	383,590	94.8	1,427	.3	382,163	99.6	294,775	76.8	225,860	58.8	166,265	43.3
Wisconsin	942,441	891,371	94.6	4,906	.6	886,465	99.4	796,030	89.3	617,506	69.3	346,310	38.9
Wyoming	79,091	71,605	90.5	796	1.1	70,809	98.9	44,672	62.4	15,134	21.1	7,518	10.5

[1] Minute differences between sum of numbers and totals are due to computer roundings.

TABLE 2A.—NEGROES BY GEOGRAPHIC AREA

[Number [1] and percentage attending school at increasing levels of isolation, fall 1968 elementary and secondary school survey]

Geographic area	Total number of students	Total number of Negro students	Percent of total students	Negro students attending minority schools: 0 to 49.9 percent		50 to 100 percent		95 to 100 percent		99 to 100 percent		100 percent	
				Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Continental United States	43,353,567	6,282,173	14.5	1,467,291	23.4	4,814,881	76.6	3,832,843	61.0	3,331,404	53.0	2,493,398	39.7
32 northern and western [2]	28,579,766	2,703,056	9.5	746,030	27.6	1,957,025	72.4	1,198,052	44.3	834,898	30.9	332,408	12.3
6 northern and western [3]	13,596,625	1,817,615	13.4	450,571	24.8	1,367,044	75.2	879,367	48.4	649,946	35.8	280,440	15.4
6 border and District of Columbia [4]	3,730,317	636,157	17.1	180,569	28.4	455,588	71.6	368,149	57.9	294,844	46.3	160,504	25.2
11 southern [5]	11,043,485	2,942,960	26.6	540,692	18.4	2,402,268	81.6	2,266,642	77.0	2,201,662	74.8	2,000,486	68.0
5 southern [6]	3,648,842	1,363,254	37.4	143,497	10.5	1,219,757	89.5	1,194,699	87.6	1,188,268	87.2	1,116,990	81.9

[1] Minute differences between sum of numbers and totals are due to computer rounding.
[2] Alaska, Arizona, California, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, Wisconsin, Wyoming.
[3] Illinois, Indiana, Michigan, New York, Ohio, Pennsylvania.
[4] Delaware, District of Columbia, Kentucky, Maryland, Missouri, Oklahoma, West Virginia.
[5] Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia.
[6] Alabama, Georgia, Louisiana, Mississippi, South Carolina.

TABLE 2B.—SPANISH SURNAMED AMERICANS BY AREA OF SIGNIFICANT POPULATION

[Number [1] and percentage attending school at increasing levels of isolation fall, 1968 elementary and secondary school survey]

Area	Total number of students	Total number of Spanish surnamed American students	Percent of total students	Spanish-surnamed Americans attending minority schools: 0 to 49.9 percent		50 to 100 percent		80 to 100 percent		95 to 100 percent		100 percent	
				Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Continental United States	43,353,567	2,002,776	4.6	906,919	45.3	1,095,857	54.7	634,891	31.7	331,781	16.6	38,077	1.9
Arizona, California, Colorado, New Mexico, Texas (5)	8,144,330	1,397,586	17.2	640,943	45.9	756,643	54.1	414,689	29.7	215,688	15.4	31,159	2.2
Connecticut, Illinois, New Jersey, New York (4)	7,650,697	394,449	5.2	110,587	28.0	283,862	72.0	197,589	50.1	108,785	27.6	5,778	1.5
Florida (1)	1,340,665	52,628	3.9	26,287	49.9	26,341	50.1	9,479	18.0	3,275	6.2	240	.5
Other States and District of Columbia (39)	26,217,875	158,113	.6	129,102	81.7	29,011	18.3	13,135	8.3	4,033	2.6	900	.6

See footnotes at end of table.

TABLE 2C.—NONMINORITIES BY GEOGRAPHIC AREA

[Number [1] and percentage attending school at increasing levels of isolation, fall 1968 elementary and secondary school survey]

Geographic area	Total number of students	Total number of nonminority students	Percent of total students	Nonminority students attending nonminority schools: 0 to 49.9 percent		50 to 100 percent		95 to 100 percent		99 to 100 percent		100 percent	
				Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Continental United States	43,353,568	34,697,133	80.0	716,980	2.1	33,980,153	97.9	22,778,975	65.7	13,020,419	37.5	5,723,597	16.5
32 Northern and Western [2]	28,579,765	24,138,249	84.5	525,691	2.2	23,612,557	97.8	16,814,581	69.7	9,871,450	40.9	4,020,212	16.7
6 Northern and Western [3]	13,596,626	11,330,289	83.3	239,649	2.1	11,090,639	97.9	8,658,434	76.4	5,529,380	48.8	2,217,669	19.6
6 Border and District of Columbia [4]	3,730,318	3,056,028	81.9	37,167	1.2	3,018,861	98.8	2,030,382	66.4	1,297,637	42.5	738,408	24.2
11 Southern [5]	11,043,485	7,502,856	67.9	154,122	2.1	7,348,735	97.9	3,934,012	52.4	1,851,332	24.7	964,977	12.9
5 Southern [6]	3,648,842	2,278,702	62.5	11,428	.5	2,267,274	99.5	1,444,750	63.4	751,491	33.0	416,307	18.3

[1] Minute differences between sum of numbers and totals are due to computer rounding.
[2] Alaska, Arizona, California, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, Wisconsin, Wyoming.
[3] Illinois, Indiana, Michigan, New York, Ohio, Pennsylvania.
[4] Delaware, District of Columbia, Kentucky, Maryland, Missouri, Oklahoma, West Virginia.
[5] Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia.
[6] Alabama, Georgia, Louisiana, Mississippi, South Carolina.

TABLE 3-A.—NEGROES IN 100 LARGEST SCHOOL DISTRICTS, RANKED BY SIZE

[Number [1] and percentage attending school at increasing levels of isolation, fall 1968 elementary and secondary school survey]

Districts	Total number of students	Total number of Negro students	Percent of total students	Negro attending minority schools: 0 to 49.9 percent		50 to 100 percent		95 to 100 percent		99 to 100 percent		100 percent	
				Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total	10,417,750	3,250,319	31.2	418,633	12.9	2,831,686	87.1	2,201,589	67.7	1,798,445	55.3	1,091,978	33.6
New York, N.Y.	1,063,787	334,841	31.5	65,824	19.7	269,017	80.3	146,945	43.9	88,233	26.4	34,033	10.2
Los Angeles, Calif.	653,549	147,738	22.6	7,012	4.7	140,726	95.3	116,017	78.5	77,026	52.1	18,118	12.3
Chicago, Ill.	582,274	308,266	52.9	9,742	3.2	298,524	96.8	263,159	85.4	234,045	75.9	146,152	47.4
Detroit, Mich.	296,097	175,316	59.2	15,781	9.0	159,535	91.0	103,590	59.1	66,069	37.7	18,510	10.6
Philadelphia, Pa.	282,617	166,083	58.8	15,880	9.6	150,203	90.4	99,277	59.8	72,174	43.5	7,201	4.3
Houston, Tex.	246,098	81,966	33.3	4,318	5.3	77,648	94.7	70,816	86.4	64,907	79.2	52,854	64.5
Dade County, Fla (Miami)	232,465	56,518	24.3	7,032	12.4	49,486	87.6	43,664	77.3	41,115	72.7	27,482	48.6
Baltimore City, Md.	192,171	125,174	65.1	9,646	7.7	115,528	92.3	94,825	75.8	82,629	66.0	54,505	43.5
Dallas, Tex.	159,924	49,235	30.8	1,045	2.1	48,190	97.9	40,431	82.1	26,131	53.1	15,807	32.1
Cleveland, Ohio	156,054	87,241	55.9	4,156	4.8	83,085	95.2	69,728	79.9	59,174	67.8	21,516	24.7
Washington, D.C.	148,725	139,006	93.5	1,253	.9	137,753	99.1	123,939	89.2	95,608	68.8	38,701	27.8
Prince Georges County, Md. (D.C. area)	146,976	22,313	15.2	12,525	56.1	9,788	43.9	4,618	20.7	3,688	16.5	3,112	13.9
Milwaukee, Wis.	130,445	31,130	23.9	3,849	12.4	27,281	87.6	14,783	47.5	9,288	29.8	4,819	15.5
San Diego, Calif.	128,914	15,004	11.6	3,767	25.1	11,237	74.9	5,732	38.2	448	3.0	0	0
Memphis, Tenn.	125,813	67,395	53.6	1,765	2.6	65,630	97.4	62,132	92.2	56,181	83.4	49,381	73.3
Baltimore County, Md.	123,717	4,299	3.5	4,299	100.0	0	0	0	0	0	0	0	0
Duval County, Fla. (Jacksonville)	122,637	34,638	28.2	4,362	12.6	30,276	87.4	30,276	87.4	29,446	85.0	26,556	76.7
Fairfax County, Va. (D.C. area)	122,107	3,322	2.7	3,322	100.0	0	0	0	0	0	0	0	0
Montgomery County, Md. (D.C. area)	121,458	4,872	4.0	4,872	100.0	0	0	0	0	0	0	0	0
St. Louis, Mo.	115,582	73,408	63.5	5,244	7.1	68,164	92.9	63,255	86.2	55,632	75.8	36,651	49.9
Atlanta, Ga.	111,227	68,662	61.7	3,728	5.4	64,934	94.6	61,976	90.0	61,297	89.3	53,644	78.1
Orleans Parish, La. (New Orleans)	110,783	74,378	67.1	6,569	8.8	67,809	91.2	60,407	82.1	59,700	80.3	46,320	62.3
Columbus, Ohio	110,699	28,729	26.0	8,263	28.8	20,466	71.2	7,222	25.1	2,873	10.0	890	3.1
Indianapolis, Ind.	108,587	36,577	33.7	8,205	22.4	28,372	77.6	19,347	52.9	13,728	37.5	3,945	10.8
Broward County, Fla. (Fort Lauderdale)	103,003	24,516	23.8	3,556	14.5	20,960	85.5	19,545	79.7	19,075	77.8	16,882	68.9
Hillsborough County, Fla. (Tampa)	110,985	19,225	19.0	3,513	18.3	15,712	81.7	13,604	70.8	13,604	70.8	12,371	64.3
Denver, Colo.	96,577	13,639	14.1	2,732	20.0	10,907	80.0	7,539	55.3	2,862	21.0	0	0
Boston, Mass.	94,174	25,482	27.1	5,943	23.3	19,539	76.7	8,558	33.6	4,936	19.4	79	.3
San Francisco, Calif.	94,154	25,923	27.5	4,024	15.5	21,899	84.5	5,275	20.3	1,317	5.1	110	.4
Seattle, Wash.	94,025	10,376	11.0	4,647	44.8	5,729	55.2	0	0	0	0	0	0
Nashville-Davidson County, Tenn.	93,720	22,561	24.1	3,794	16.8	18,767	83.2	12,746	56.5	12,256	54.3	11,696	51.8
Cincinnati, Ohio	86,807	37,275	42.9	8,171	21.9	29,104	78.1	12,652	33.9	10,903	29.3	6,291	16.9
Fort Worth, Tex.	86,528	21,398	24.7	2,065	9.7	19,333	90.3	18,283	85.4	16,389	76.6	12,991	60.7
Jefferson County, Ky. (Louisville area)	85,846	3,213	3.7	2,365	73.6	848	26.4	848	26.4	848	26.4	0	0
Charlotte-Mecklenburg, N.C.	83,111	24,241	29.2	6,704	27.7	17,537	72.3	14,274	58.9	13,863	57.2	9,459	39.0
Tulsa, Okla.	79,990	9,728	12.2	1,518	15.6	8,210	84.4	5,900	60.6	5,900	60.6	4,447	45.7
Albuquerque, N. Mex.	79,669	1,897	2.4	523	27.6	1,374	72.4	174	9.2	169	8.9	0	0
San Antonio, Tex.	79,353	11,637	14.7	1,234	10.6	10,403	89.4	9,519	81.8	6,522	56.0	6,137	52.7
Pinellas County, Fla. (Clearwater)	78,466	12,715	16.2	2,762	21.7	9,953	78.3	9,169	72.1	8,147	64.1	3,298	25.9
Portland, Oreg.	78,413	6,388	8.1	3,664	57.4	2,724	42.6	0	0	0	0	0	0
De Kalb County, Ga. (Decatur)	77,967	4,124	5.3	1,841	44.6	2,283	55.4	1,939	47.0	1,939	47.0	421	10.2
Pittsburgh, Pa.	76,268	29,898	39.2	6,373	21.3	23,525	78.7	12,779	42.7	11,588	38.8	2,925	9.8
Orange County, Fla. (Orlando)	76,089	13,055	17.2	2,627	20.1	10,428	79.9	10,064	77.1	10,064	77.1	10,064	77.1
Newark, N.J.	75,960	55,057	72.5	1,174	2.1	53,883	97.9	41,746	75.8	29,738	54.0	10,607	19.3
Mobile County, Ala.	75,464	31,441	41.7	3,442	10.9	27,999	89.1	26,831	85.3	26,831	85.3	18,832	59.9
Oklahoma City, Okla.	74,727	16,255	21.8	2,037	12.5	14,218	87.5	12,963	79.7	9,749	60.0	924	5.7
Kansas City, Mo.	74,202	34,692	46.8	4,865	14.0	29,827	86.0	23,331	67.3	17,460	50.3	5,050	14.6
Buffalo, N.Y.	72,115	26,381	36.6	7,113	27.0	19,268	73.0	16,122	61.1	11,562	43.8	1,474	5.6
Long Beach, Calif.	72,065	5,489	7.6	2,011	36.6	3,478	63.4	0	0	0	0	0	0
Minneapolis, Minn.	70,006	5,255	7.5	3,722	70.8	1,533	29.2	0	0	0	0	0	0
Wichita, Kans.	68,391	8,913	13.0	4,058	45.5	4,855	54.5	4,222	47.4	1,386	15.6	0	0
Clark County, Nev. (Las Vegas)	67,526	8,233	12.2	3,961	48.1	4,272	51.9	3,626	44.0	699	8.5	0	0
Birmingham, Ala.	66,434	34,156	51.4	2,472	7.2	31,684	92.8	30,810	90.2	30,810	90.2	28,906	84.6
Anne Arundel County, Md. (Annapolis)	65,745	8,923	13.6	7,161	80.3	1,762	19.7	0	0	0	0	0	0
Jefferson County, Ala. (Birmingham area)	65,328	18,186	27.8	538	3.0	17,648	97.0	17,579	96.7	17,579	96.7	17,579	96.7
Oakland, Calif.	64,102	35,386	55.2	1,958	5.5	33,428	94.5	16,604	46.9	8,062	22.8	1,661	4.7
East Baton Rouge Parish, La.	63,725	23,751	37.3	1,333	5.6	22,418	94.4	21,617	91.0	21,330	89.8	19,007	80.0

Districts	Total number of students	Total Number of Negro students	Percent of total students	Negroes attending minority schools: 0 to 49.9 percent Number	0 to 49.9 percent Percent	50 to 100 percent Number	50 to 100 percent Percent	95 to 100 percent Number	95 to 100 percent Percent	99 to 100 percent Number	99 to 100 percent Percent	100 percent Number	100 percent Percent
Brevard County, Fla. (Titusville)	62,563	6,327	10.1	4,416	69.8	1,911	30.2	1,911	30.2	1,911	30.2	1,911	30.2
Omaha, Nebr	62,431	11,284	18.1	2,309	20.5	8,975	79.5	4,321	38.3	674	6.0	0	0
Granite, Utah (Salt Lake City)	62,236	59	.1	59	100.0	0	0	0	0	0	0	0	0
El Paso, Tex	62,105	1,804	2.9	1,114	61.8	690	38.2	379	21.0	194	10.8	78	4.3
Palm Beach County, Fla	61,715	17,158	27.8	3,191	18.6	13,967	81.4	13,074	76.2	12,409	72.3	12,409	72.3
Toledo, Ohio	61,684	16,473	26.7	3,725	22.6	12,748	77.4	6,752	41.0	2,164	13.1	1,617	9.8
Caddo Parish, La. (Shreveport)	60,483	26,429	43.7	649	2.5	25,780	97.5	25,734	97.4	25,734	97.4	24,844	94.0
Jefferson County, Colo. (Lakewood)	60,367	60	.1	60	100.0	0	0	0	0	0	0	0	0
Dayton, Ohio	59,527	22,790	38.3	2,488	10.9	20,302	89.1	17,574	77.1	14,198	62.3	5,061	22.2
Jefferson Parish, La. (Gretna)	59,485	12,812	21.5	2,632	20.5	10,180	79.5	10,180	79.5	10,180	79.5	10,180	79.5
Akron, Ohio	58,589	15,137	25.8	5,705	37.7	9,432	62.3	3,133	20.7	1,264	8.4	588	3.9
Fresno, Calif	58,234	5,251	9.0	831	15.8	4,420	84.2	3,808	72.5	2,575	49.0	593	11.3
Greenville County, S.C	56,306	12,453	22.1	1,839	14.8	10,614	85.2	10,378	83.3	10,378	83.3	9,258	74.3
Kanawha County, W. Va. (Charleston)	56,118	3,548	6.3	2,905	81.9	643	18.1	0	0	0	0	0	0
Norfolk, Va	56,029	23,499	41.9	2,701	11.5	20,798	88.5	18,322	78.0	17,236	73.3	11,648	49.6
Louisville, Ky	55,212	25,470	46.1	3,432	13.5	22,038	86.5	13,418	52.7	6,827	26.8	1,996	7.8
Tucson, Ariz	53,667	2,767	5.2	524	18.9	2,243	81.1	380	13.7	148	5.3	0	0
San Juan, Calif. (Carmichael)	53,174	134	.3	134	100.0	0	0	0	0	0	0	0	0
Garden Grove, Calif	52,908	83	.2	83	100.0	0	0	0	0	0	0	0	0
Sacramento, Calif	52,545	7,324	13.9	5,150	70.3	2,174	29.7	0	0	0	0	0	0
Polk County, Fla. (Bartow)	52,255	11,652	22.3	3,815	32.7	7,837	67.3	6,769	66.7	7,769	66.7	7,769	66.7
Austin, Tex	51,760	7,783	15.0	1,022	13.1	6,761	86.9	5,063	65.1	4,485	57.6	1,728	22.2
St. Paul, Minn	50,338	2,917	5.8	2,556	87.6	361	12.4	361	12.4	0	0	0	0
Winston-Salem/Forsyth County, N.C	49,831	13,798	27.7	2,111	15.3	11,687	84.7	11,643	84.4	10,952	79.4	9,778	70.9
Gary, Ind	48,431	29,826	61.6	916	3.1	28,910	96.9	24,110	80.8	23,265	78.0	9,652	32.4
Mount Diablo, Calif. (Concord)	48,351	369	.8	369	100.0	0	0	0	0	0	0	0	0
Rochester, N.Y	47,372	13,679	28.9	6,232	45.6	7,447	54.4	1,652	12.1	0	0	0	0
Charleston County, S.C	47,178	16,730	35.5	2,140	12.8	14,590	87.2	14,091	84.2	14,091	84.2	14,091	84.2
Escambia County, Fla. (Pensacola)	46,875	12,924	27.6	2,904	22.5	10,020	77.5	9,046	70.0	9,046	70.0	9,046	70.0
Des Moines, Iowa	46,532	3,611	7.8	2,057	57.0	1,554	43.0	0	0	0	0	0	0
Flint, Mich	46,495	17,212	37.0	4,165	24.2	13,047	75.8	6,425	37.3	1,193	6.9	0	0
Corpus Christi, Tex	46,110	2,496	5.4	43	1.7	2,453	98.3	1,912	76.6	810	32.5	640	25.6
Shelby County, Tenn. (Memphis area)	44,133	14,281	32.4	950	6.7	13,331	93.3	13,331	93.3	13,331	93.3	12,667	88.7
Richmond, Calif	43,123	10,424	24.2	4,006	38.4	6,418	61.6	2,819	27.0	1,143	11.0	534	5.1
Richmond, Va	43,115	29,441	68.3	1,980	6.4	27,551	93.6	24,900	84.6	24,366	82.8	22,971	78.0
Chatham County (Savannah)	42,416	17,449	41.1	1,620	9.3	15,829	90.7	15,102	86.5	15,102	86.5	13,460	77.1
Muscogee County, Ga. (Columbus)	42,373	12,517	29.5	884	7.1	11,633	92.9	10,757	85.9	10,757	85.9	8,768	70.0
Fort Wayne, Ind	41,595	5,760	13.8	1,552	26.9	4,208	71.3	1,328	23.1	0	0	0	0
Virginia Beach, Va	41,272	4,372	10.6	2,719	62.2	1,653	37.8	1,653	37.8	1,278	29.2	1,278	29.2
Cobb County, Ga. (Marietta)	40,918	1,336	3.3	1,246	93.3	90	6.7	90	6.7	90	6.7	90	6.7
Columbia, S.C	40,122	18,735	46.7	3,236	17.3	15,499	82.7	15,163	80.9	15,163	80.9	13,183	70.4
Montgomery County, Ala	39,093	16,691	42.7	945	5.7	15,746	94.3	15,746	94.3	15,746	94.3	15,746	94.3
Calcasieu Parish, La. (Lake Charles)	39,043	9,934	25.4	948	9.5	8,986	90.5	8,986	90.5	8,986	90.5	8,986	90.5

[1] Minute differences between sum of numbers and totals are due to computer rounding.

TABLE 3B.—SPANISH-SURNAMED AMERICANS IN SELECTED LARGE SCHOOL DISTRICTS, RANKED BY SIZE

[Number and percentage attending school at increasing levels of isolation, fall 1968 elementary and secondary school survey]

District	Total number of students	Total number of Spanish-American students	Percent of total students	Spanish-surnamed Americans attending minority schools: 0 to 49.9 percent Number	0 to 49.9 percent Percent	50 to 100 percent Number	50 to 100 percent Percent	80 to 100 percent Number	80 to 100 percent Percent	95 to 100 percent Number	95 to 100 percent Percent	100 percent Number	100 percent Percent
Total	4,579,950	767,900	16.8	211,787	27.6	556,113	72.4	383,447	49.9	213,830	27.8	11,121	1.4
New York, N.Y	1,063,787	244,302	23.0	28,783	11.8	215,519	88.2	164,202	67.1	97,373	39.9	5,072	2.1
Los Angeles, Calif	653,549	130,450	20.0	42,684	32.7	87,766	67.3	69,088	53.0	42,340	32.5	647	.5
Chicago, Ill	582,274	49,886	8.6	19,148	38.4	30,738	61.6	15,792	31.7	3,022	6.1	183	.4
Houston, Tex	246,098	31,780	12.9	11,301	35.6	20,479	64.4	12,840	40.4	3,803	12.0	178	.6
Dade County, Fla. (Miami)	232,465	39,487	17.0	15,364	38.9	24,123	61.1	8,566	21.7	2,993	7.6	32	.1
Dallas, Tex	159,924	12,196	7.6	5,447	44.7	6,749	55.3	4,057	33.3	1,192	9.8	73	.6
San Diego, Calif	128,914	12,981	10.1	8,485	65.4	4,496	34.6	3,418	26.3	1,127	8.7	0	0
Hillsborough County, Fla. (Tampa)	100,985	6,766	6.7	5,275	78.0	1,491	22.0	534	7.9	70	1.0	68	1.0
Denver, Colo	96,577	18,611	19.3	8,884	47.7	9,727	52.3	4,981	26.8	1,527	8.2	0	0
San Francisco, Calif	94,154	12,217	13.0	4,098	33.5	8,119	66.5	1,164	9.5	112	.9	0	0
Fort Worth, Tex	86,528	6,937	8.0	4,058	58.5	2,879	41.5	452	6.5	452	6.5	29	.4
Albuquerque, N. Mex	79,669	28,151	35.3	7,913	28.1	20,238	71.9	7,846	27.9	947	3.4	0	0
San Antonio, Tex	79,353	46,188	58.2	5,731	12.4	40,457	87.6	33,265	72.0	23,633	51.2	1,357	2.9
Newark, N.J	75,960	7,046	9.3	516	7.3	6,530	92.7	3,869	54.9	2,109	29.9	355	5.0
Buffalo, N.Y	72,115	1,278	1.8	866	67.8	412	32.2	142	11.1	137	10.7	0	0
Long Beach, Calif	72,065	3,840	5.3	3,100	80.7	740	19.3	37	1.0	0	0	0	0
Oakland, Calif	64,102	5,241	8.2	792	15.1	4,449	84.9	2,570	49.0	586	11.2	26	.5
El Paso, Tex	62,105	33,639	54.2	5,800	17.2	27,839	82.8	22,439	66.7	15,929	47.4	2,139	6.4
Palm Beach County, Fla	61,715	1,553	2.5	1,252	80.6	301	19.4	189	12.2	22	1.4	18	1.2
Jefferson County College (Lakewood)	60,367	1,118	1.9	1,118	100.0	0	0	0	0	0	0	0	0
Fresno, Calif	58,243	11,148	19.1	6,286	56.4	4,862	43.6	1,261	11.3	1,077	9.7	5	0
Tucson, Ariz	53,667	13,798	25.7	3,061	22.2	10,737	77.8	5,591	40.5	2,527	18.3	0	0
San Juan, Calif. (Carmichael)	53,174	1,126	2.1	1,126	100.0	0	0	0	0	0	0	0	0
Garden Grove, Calif	52,908	4,862	9.2	4,862	100.0	0	0	0	0	0	0	0	0
Sacramento, Calif	52,545	6,184	11.8	4,441	71.8	1,743	28.2	278	4.5	0	0	0	0
Austin, Tex	51,760	9,956	19.2	3,020	30.3	6,936	69.7	6,432	64.6	2,180	21.9	0	0
Mount Diablo, Calif. (Concord)	48,351	1,863	3.9	1,863	100.0	0	0	0	0	0	0	0	0
Rochester, N.Y	47,372	1,553	3.3	999	64.3	554	35.7	234	15.1	41	2.6	0	0
Corpus Christi, Tex	46,110	21,490	46.6	3,707	17.2	17,783	82.8	14,178	66.0	10,508	48.9	921	4.3
Richmond, Calif	43,123	2,253	5.2	1,807	80.2	446	19.8	204	9.1	123	5.5	18	.8

[1] Minute differences between sum of numbers and totals are due to computer rounding.

TABLE 4A.—NEGROES IN 100 LARGEST SCHOOL DISTRICTS BY GEOGRAPHIC AREA

[Number [1] and percentage attending school at increasing levels of isolation, fall 1968 elementary and secondary school survey]

Geographic area	Total number of students	Total number of Negro students	Percent of total students	Negro students attending minority schools: 0 to 49.9 percent		50 to 100 percent		95 to 100 percent		99 to 100 percent		100 percent	
				Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Continental United States	10,417,750	3,250,319	31.2	418,633	12.9	2,831,686	87.1	2,201,589	67.7	1,798,445	55.3	1,091,978	33.6
32 northern and western [2]	5,710,874	1,791,677	31.4	245,474	13.7	1,546,203	86.3	1,047,760	58.5	752,904	42.0	296,376	16.5
6 northern and western [3]	3,198,998	1,351,484	42.2	174,291	12.9	1,177,193	87.1	811,795	60.1	612,433	45.3	259,855	19.2
6 border and District of Columbia [4]	1,340,469	470,901	35.1	62,122	13.2	408,779	86.8	343,097	72.9	278,341	59.1	145,386	30.9
11 southern [5]	3,366,407	987,741	29.3	111,037	11.2	876,704	88.8	810,732	82.1	767,200	77.7	650,216	65.8
5 southern [6]	1,038,345	399,784	38.5	36,062	9.0	363,722	91.0	347,206	86.8	345,713	86.5	303,315	75.9

[1] Minute differences between sum of numbers and totals are due to computer rounding.
[2] Alaska, Arizona, California, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, Wisconsin, Wyoming.
[3] Illinois, Indiana, Michigan, New York, Ohio, Pennsylvania.
[4] Delaware, District of Columbia, Kentucky, Maryland, Missouri, Oklahoma, West Virginia.
[5] Alaska, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia.
[6] Alabama, Georgia, Louisiana, Mississippi, South Carolina.

TABLE 4B.—SPANISH SURNAMED AMERICANS IN 100 LARGEST SCHOOL DISTRICTS BY AREA OF SIGNIFICANT POPULATION

[Number [1] and percentage attending school at increasing levels of isolation fall, 1968 elementary and secondary school survey]

District	Total number of students	Total number of Spanish-American students	Percent of total students	Spanish-surnamed Americans attending minority schools: 0 to 49.9 percent		50 to 100 percent		80 to 100 percent		95 to 100 percent		100 percent	
				Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Continental United States	10,417,750	811,167	7.8	239,355	29.5	571,812	70.5	391,887	48.3	216,683	26.7	11,373	1.4
Arizona, California, Colorado, New Mexico, Texas (5)	2,343,277	416,029	17.8	139,584	33.6	276,445	66.4	190,101	45.7	108,063	26.0	5,393	1.3
Connecticut, Illinois, New Jersey, New York (4)	1,841,508	304,065	16.5	50,312	16.5	253,753	83.5	184,057	60.5	102,682	33.8	5,610	1.8
Florida (1)	937,053	49,431	5.3	23,447	47.4	25,984	52.6	9,350	18.9	3,146	6.4	160	.3
Other States and District of Columbia (39)	5,295,912	41,642	.8	26,012	62.5	15,630	37.5	8,379	20.1	2,792	6.7	210	.5

[1] Minute differences between sum of numbers and totals are due to computer rounding.

Mr. ELLENDER. Mr. President, I have a table furnished to the Appropriations Committee by HEW, indicating the number of students in five of the largest districts in the country during the fall term of 1968. Those districts are in New York, Los Angeles, Chicago, Detroit, and Philadelphia. The statement shows that there is a total enrollment of 2,878,224 students in those five largest U.S. school districts. The statement also shows that even though the total Negro enrollment constitutes 39.9 percent of the total enrollment in those districts, only 3.9 percent of the total enrollment is made up of Negro students attending majority white schools.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MONDALE. May I have 2 minutes?

Mr. MATHIAS. I yield 2 minutes to the Senator from Minnesota.

Mr. MONDALE. Permit me to say that if there is official discrimination in New York, the Court has jurisdiction to reach it and eliminate it. The Senator from Louisiana knows it is more than likely that those are figures which show residential patterns, which have not been found to be the result of official discrimination.

Mr. ELLENDER. Why does not Mr. Finch apply the same rules and regulations there that he does in the South?

Mr. MONDALE. The truth is that wherever there is official discrimination, in the North or the South, it must fall under the edict of the Supreme Court. If there is official discrimination in New York, it is illegal, and the same law will apply there as applies in Louisiana.

The problem is that in many of the States of the South there has been a longstanding tradition of separation of public schools on the basis of color. All the Supreme Court decisions have focused on the question of official discrimination. What we should do about de facto discrimination, or racial isolation arising from residential living patterns, is something that we hope to focus on in the Select Committee on Equal Educational Opportunity which the Senate created last week. The only point I make is that we are far from even coming close to eliminating official discrimination in the South, and I suspect there is more official discrimination in the North than we are generally aware of at this point.

I yield the floor.

Mr. STENNIS. Mr. President, will the Senator yield briefly to me, on my own time? I yield myself 3 minutes.

With reference to the number of Negroes in school districts, the 100 largest school districts, ranked by size, to which the Senator from Louisiana made reference, the official records show that none of those are from the South. They are all from the North. Furthermore, in one of my speeches, I referred to the five largest cities in the South as compared with the five largest school districts in the North, and the percentage of Negro children in predominately Negro schools ran almost parallel as between northern cities and southern cities. I can get those figures, but I do not have them here now.

My question is this: Did I understand the Senator correctly when he was giving the number of students that are in predominately black school districts? Did he say they were principally in the South? That is what I understood the Senator to say, that they were principally in the South.

Mr. MONDALE. What I said was that the policy of officially separating children into all black and all white schools is a practice that was followed principally, but not exclusively, in the South. That is what I said.

Mr. STENNIS. As I understood, the Senator said the districts were principally in the South. This is kind of customary language that has been used until these figures came out.

Does the Senator vigorously stand for the enforcement of the Federal law in States beyond the South to eradicate segregation? Does the Senator really stand for that vigorously? I think he does.

Mr. MONDALE. I thank the Senator from Mississippi. This debate has been going on for about 10 days. I am for the elimination of official discrimination wherever it is found, North or South. There is an effort to confuse the distinction between school systems which are organized on the basis of official discrimination and school systems, on the other hand, which are not, but have racial imbalance arising from residential living patterns.

The first is unconstitutional and illegal and prohibited by the Supreme Court. It is precisely that category—the illegal and unconstitutional category—that the Whitten and Jonas amendments are designed to influence. It has

nothing to do with de facto segregation or racial isolation. It has nothing to do with perfectly legal, but nevertheless undesirable, patterns of racial isolation. This amendment is designed, just as some other amendments we have seen—to do one thing, to obstruct the enforcement of a constitutional right as declared repeatedly by the U.S. Supreme Court.

Mr. STENNIS. Mr. President, if the Senator would yield further to me, I want to ask him a specific question. He is an honest person and truthful. If the Senator believes in that, what is he going to do about New York State? I am not pointing to New York any more than others, but in New York they have passed a State law where, instead of getting ready for real integration, they are prohibiting it by law as far as they can. Would the Senator take a stand on that and make a suggestion to the Attorney General that he bring a suit to test that law and also put some of his men up there to scrupulously examine those districts and see whether or not there is any official act of gerrymandering the districts? Would the Senator vigorously stand for that?

Mr. MONDALE. I vigorously support a national effort to eliminate official discrimination wherever it is found, including in the city of New York, if it is there. There is no question about that. I could not uphold the oath I took when I became a U.S. Senator if I said constitutional rights applied in some places and not in others.

What we are involved in here is the question whether the Supreme Court orders which have repeatedly declared that official discrimination is illegal, shall be the law of this land, shall be followed and pursued by the agencies of this Government, or whether, because there is racial isolation——

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. STENNIS. Mr. President, I yield myself 2 minutes.

Mr. MONDALE. Or whether a racial isolation problem in New York which has not been found to arise from unconstitutional acts—if that is the case—can be an excuse to delay the enforcement of the orders of the Supreme Court of the United States. That is the issue.

Mr. STENNIS. May I ask the Senator this? What does he propose be done about the District of Columbia? It is resegregated so that 95 percent are colored and 5 percent are white. What does he propose to do about that? Would he suggest importing children in from Maryland and Virginia? Would he do that?

Mr. MONDALE. That has nothing to do with the Whitten amendments, because they do not strike at de facto segregation. The reason why we established the Select Committee on Equal Educational Opportunity is to explore the kind of question the Senator raised, to determine what this country should do to deal with the problem of racial imbalance and racial isolation in situations which are perfectly legal under present law, but which may be undesirable as a matter of social policy.

The vice of the Whitten-Jonas amendments is that they would try to support activities that are perfectly illegal, and unconstitutional.

The PRESIDING OFFICER. The time of the Senator has again expired.

Who yields time?

Mr. MATHIAS. Mr. President, I yield 5 minutes to the Senator from New York.

Mr. JAVITS. Mr. President, I suppose we ought to be grateful for the advertisement. New York is very much in the forefront of the discussion. Fortunately, I am here, and I would like to address myself to the issue.

Mr. President, we are dealing with a problem which arises by virtue of the fact that de jure segregation—that is, segregation enforced by State and local law—is unconstitutional. Senators have argued, "If it is unconstitutional and therefore unlawful, it does not exist; so we are now on exactly the same basis as those areas where segregation of the races in the public schools exists, for whatever reason; and if you cannot reach them, you cannot reach us."

That is really the essence of the argument. We went through this at very great length in connection with the so-called Stennis amendment.

Mr. President, the invalidity of that argument is that if you applied that standard, you would simply assume legality in all cases, whatever may be the reason for the existence of the segregated situation.

The courts do not do that. It is no longer a matter of discretion for us. That has been decided very clearly. The courts have established the proposition that where you have had de jure segregation, and the conditions created by de jure segregation continue, they will assume that the de jure segregation must be eliminated by changing those conditions.

That also happens to correspond with sociological fact, because, interestingly enough, racial patterns in the South are very mixed. They are not clearly defined and separate, as they are in New York City and many other cities. In New York City, you have a number of sections which are heavily populated by blacks. The same condition exists in Chicago, in Baltimore, and in many other places.

However, in the South that is not the case, since the condition of segregation which is complained of has been brought about by law rather than residential patterns.

The courts have consistently held that those laws violate the Constitution which outlaws segregation resulting from State action.

Mr. President, in the North and in other areas, you have segregation brought about by residential patterns, heavily attributable to the injustices suffered by blacks in the South who have migrated, to the extent of almost half their number, within this century to the North. Mr. President, they were forced out, and as a result have created tremendous demographic problems in Washington, D.C., New York, Chicago, and other places.

Mr. President, like the Senator from Minnesota (Mr. MONDALE), I am determined to do everything I humanly can, as a person, a citizen, and a legislator, to deal with the northern problem of residential segregation which is attributable to unlawful activities conducted with the purpose of denying Negroes equal opportunity in housing, which in turn is attributable, to economic and sociological reasons. I realize that in the main, that has got to be done by enforcing the fair housing laws, which in New York are very strong, and which are also on the Federal books; and I will do my utmost, as I believe every Senator will, to bring about their enforcement, to break up the segregated patterns, and give Negroes opportunities to move to the suburbs, if they so desire.

I also intend to use every bit of influence and weight I have to get appropriate State action, where educationally the black child is deprived because of the segregated pattern of his education.

Mr. President, this goes directly to the New York statute. The New York statute deals with busing children to correct racial imbalance, and the legislature prohibits such busing on educational grounds. There are no other State laws involved. For educational reasons, only elected boards of education may order busing.

I think that law is wrong, and I am doing and will do everything I can to fight it. But let us understand its limitations. It deals not with segregation grounded in law, but with segregation grounded in fact, something the Constitution cannot control. Also, it affects only four cities, and very shortly will not affect New York City, which is in the process of electing a board of education.

The PRESIDING OFFICER. The Senator's time has again expired.

Mr. MATHIAS. I yield the Senator 2 additional minutes.

Mr. MONDALE. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. MONDALE. Suppose there is a school district in the State of New York which, in fact, has a policy of official discrimination, and then suppose the Court orders busing to overcome that discrimination. Is it the Senator's impression that the State of New York, in passing that law, could frustrate the Supreme Court?

Mr. JAVITS. Not for a moment. But this amendment to the appropriation bill could, even if a court ordered it; and that is the biggest objection to the Whitten amendment. The fact is that we were very careful; even in the upsurge of feeling which existed in this Chamber on the Stennis and Ervin amendments, to recognize the power of the Court to enforce its decrees.

But here we take that power away, because if money cannot be used for that purpose, there will be no enforcement, even if there is a decree.

Mr. MONDALE. Will the Senator yield further?

Mr. JAVITS. I yield.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MATHIAS. I yield the Senator from New York 1 additional minute.

Mr. MONDALE. Would it not be fair to say that there are probably at least three layers of this problem that one

must look at? The first is the legal layer, eliminating unconstitutional discrimination. The second is the educational layer; What do you do to achieve good education, where there is racial isolation, even though it is not illegal? Third, there is the moral issue. What do you do about the morality of racial isolation?

If I am correct, is it not true that those who propose and support the Whitten and the Jonas amendments are dealing at the first level, with the legal question, and are trying to impair the power of the Supreme Court to enforce the law of the land?

The PRESIDING OFFICER. The Senator's time has again expired.

Mr. JAVITS. Just time to answer.

Mr. MATHIAS. I yield the Senator 1 additional minute.

Mr. JAVITS. I would say that, in my judgment, it cripples the ability to implement a court decree. It does that, and probably no more, because it can only do what will come within its purview. That will be the availability of money to implement a court decree, because the use of money otherwise is already provided for in the basic law, which provides it is not to be used for busing to correct racial imbalance. Since that is already in the law, there is no purpose for this special provision, unless we are really going to invade the power of the courts to deal with de jure segregation. That is the net effect. I am not going to deal with the question of motives, because one of the great virtues of this body is that we give every Senator credit for his motives.

The PRESIDING OFFICER. The time of the Senator from New York has expired.

Mr. MATHIAS. Mr. President, I yield an additional 2 minutes to the Senator from New York.

Mr. MONDALE. Mr. President, we who believe that the Supreme Court orders to eliminate official discrimination must be enforced have been offered as an answer that de facto segregation exists elsewhere, and that therefore until an undesirable local situation can be eliminated, we should not do anything about something that is both illegal and undesirable; thus we should not enforce the law until we can deal with a social problem of an entirely different nature.

It seems to me that to create such a situation or such a policy would destroy any meaningful enforcement under the decisions of the Supreme Court and the 14th amendment; it would insure that 2 million black children would continue to go to all-black schools in the South as a matter of official policy; and it would destroy basic rights guaranteed by the 14th amendment.

Mr. JAVITS. I agree with the Senator from Minnesota. I think we have shown our good faith by joining to bring about the appointment of a select committee obligated to stand up and face the issue, even the issue of de facto segregation.

The Senator brought to the Senate what we feel is a mandate to seize the initiative and give the Senate the benefit of the greatest expertise we can muster. I know that the Senator and I intend to perform that obligation in the utmost good faith.

Mr. MATHIAS. Mr. President, I yield 3 minutes to the distinguished Senator from Kentucky.

Mr. COOPER. Section 408 denies the use of funds for certain activities, for busing students and for the assignment of any student to a particular school against the choice of his or her parents or parent.

Would the Senator say that these activities are hinged to the last clause of that statement—"to a particular school against the choice of his or her parents or parent"?

Mr. JAVITS. Yes. I think they intended to make that clause operative.

Mr. COOPER. Section 408, is then a freedom-of-choice amendment?

Mr. JAVITS. Essentially.

Mr. COOPER. It is the Senator's judgment, then, that the Green case, which decided that, while freedom of choice was not per se objectionable, if it resulted in segregation or maintained segregation, it was unlawful?

Mr. JAVITS. Exactly right. I think this case seeks to cancel out the effect of the Green case, by prohibiting us from using the means which would enable us to implement the decree in the Green case.

Mr. COOPER. I have my doubts about that for I would say that if this section should be tested and the courts followed the decision in the Green case, it would necessarily knock down the section and order HEW to provide funds.

Mr. JAVITS. I am not so sure about that, because I think we are sovereign in two areas: one is the provision of funds, or limitation on the use of funds and the other is the legislation of the jurisdiction of the courts. That is why the Ervin amendment, as presented, was so lethal—it sought to deprive the courts of their jurisdiction.

Our southern friends are astute lawyers. These are areas in which I think we are quite sovereign, and I doubt very much that a court could mandate HEW to use the money. I say that with all respect.

Mr. COOPER. My judgment is that if the courts should decide to enforce desegregation in certain school districts and section 408 was interposed, the Court would hold it invalid, and HEW would have to provide the funds.

Mr. MATHIAS. Mr. President, will the Senator yield?

Mr. JAVITS. I yield

Mr. MATHIAS. Whether the Senator from New York is right or wrong in his conclusions as to the ultimate effect, I think the Senator from Kentucky, in his usual manner, has put his finger right on the sore point, that without the words of this amendment we are headed straight for a long, difficult, and unsettling period of litigation, which must be avoided.

Mr. JAVITS. We certainly can agree on that.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MATHIAS. I yield 2 additional minutes.

Mr. COOPER. My thought is that section 409 would run to confrontation with the Green case. I cannot vote for the section. The Court has ruled upon the proposition of freedom of choice, attractive as it may sound.

I do not believe the courts have ever laid a clean and effective position, in dealing with situations in the South which they class as de jure, while in the North, the same situations, are treated by the courts as de facto.

Mr. JAVITS. I need not protest again my respect for the Senator. I do not think the effect is the same.

Let us take an area like the District of Columbia. There simply is no alternative but to upgrade the level of education here. The fact is that the people are living here and that they are nonsegregated—to wit, practically all of them live here—and this does present us with a problem which is not susceptible of being reached by law. But where there is a condition of segregation which obviously is not based upon a residential pattern but is based on the artificiality of a decades-old system of required separation of the races, I do not think that without in any way condoning the former we need be inhibited in redressing the latter.

Mr. COOPER. I made a mistake. I said that I could not vote for the amendment. I meant that I could not vote for this section, because I think it flies in the face of the Court.

As to the District of Columbia situation, I believe the Senator may be wrong. I am not sure, but, as I recall, the schools in the District of Columbia were once segregated by law.

Mr. JAVITS. The Senator is correct.

Mr. COOPER. I think they may fall under the rule applied to the Southern States.

I also suggest that the Senator may be in trouble in New York, because the legislature there, as a governmental body, has intervened in what is called a de facto situation. The Senator might find New York now faced with the de jure rulings of the Court.

Mr. JAVITS. I should not consider that "in trouble." I should consider that just fine for New York.

FORMULA AND PROJECT GRANTS

I want to point out to my colleagues a serious matter about this bill which I fear is being overlooked, and I ask Senators to bear with me in a description of our current dilemma. My point of reference is the appropriations for formula and project grants to States which are authorized under section 314 of the Public Health Service Act.

In April 1969, the revised budget estimates of President Nixon for the fiscal year 1970 transferred the funding of tuberculosis control activities from project grants to formula grants because he was recommending the level of formula grants be increased by $18 million.

This transfer created serious problems because the allocation of TB control funds in project grants differs markedly on a State-by-State basis from the allocation that must be followed by the formula under existing law. Subsequently, however, we receive assurances from the Department of Health, Education, and Welfare that project grants for the control of tuberculosis would be awarded in order to supplement formula grants in

States where they fell short of the 1969 level for TB control activities.

In the absence of final action on the 1970 budget item, the States do not have access to the promised increase in formula grant funds for the control of tuberculosis. And may I add parenthetically that the myth that tuberculosis is no longer a problem has been effectively put to rest by the recent events right here in the Capitol.

The States have accepted and, I am informed, done everything possible to cooperate to the fullest in this difficult transition. But because of the complication of a 1970 appropriations bill for HEW not yet passed, we have a very serious problem. I fear that we have not realized that under the continuing resolution which we have dutifully approved, section 314(d) allocations to States have been and must be made on the basis of a $66 million level. Under this circumstance, there is no way we can fulfill this necessary commitment to the States. Vitally needed tuberculosis control efforts will be seriously disrupted.

Additionally, and most importantly, Senators will recall that it was the unanimous wisdom of this body that $10 million should be added to fiscal 1970 section 314(d) block grants to States in order that sufficient funds would be available for a very necessary nationwide rubella vaccination program. At this point in time, unless we pass and until the President signs this bill, we will have failed to provide support to States and localities who are working desperately to forestall a German measles epidemic, the result of which will be the inevitable harvest of mentally retarded children. This is a crisis situation. It is urgent that we immediately make available the necessary tuberculosis, rubella vaccination, and other programs, vital to providing every American with quality health care.

Mr. STENNIS. Mr. President, I yield 10 minutes and such additional time as he may wish to the Senator from Louisiana.

Mr. ELLENDER. Mr. President, I have not practiced law since I came to the Senate, but I thought that the law of the land was the law as fixed by Congress. Further, I have always believed that until that law is set aside or declared unconstitutional by the Supreme Court, the laws of the Congress are the laws of the land. In the course of my remarks, I am going to read what the law of the land is. That law of Congress, so far as I know, has not been passed upon by the Supreme Court.

It seems to me that the point of this debate is being missed by those seeking to modify the so-called Whitten amendments to the current bill. The point is that the Supreme Court has never rendered any decision whatsoever requiring the busing of schoolchildren from one district, or one school, or one neighborhood to another for conformity to the Constitution.

In its decisions in this area, the Court has made absolutely no mention of busing. The wellsprings of all this activity on the part of the lower courts and the doctrinaire bureaucrats of HEW are the simple statements of the Court in the Brown decision that segregation by law must be done away with. We have accomplished that in the South to a far larger degree than it has been done, in fact, by many areas in the North. Yet nowhere but in the South do we find buses traveling the city streets and rural byways for the sole purpose of establishing some form of racial balance.

A second point, Mr. President, related to the first, is that in no place can a decision by the Supreme Court be found, or by the appellate courts, to my knowledge, as to what degree of racial balance is considered constitutional and what degree of racial imbalance is unconstitutional. The Court has not so decided and I frankly doubt that national policies can get so far away from the bounds of reason that the Court can ever so decide.

In light of those two points, what do we find? We find a series of specious arguments developed by the bureaucrats of HEW and the hot-eyed civil rights attorneys in the Department of Justice. These arguments have been developed to enforce standards of racial balance in the South that have no basis in reality, reason, or law. They have basis only in half-thought-out theories of sociology that are rapidly being called into question. To impose this standard of racial balance, whatever they may mean, we have had a condition forced upon the South that no other part of the country would stand for. In the debate on amendments to the Elementary and Secondary Education Act bill here in the Senate a few days ago, even the opponents of the South acknowledged this fact.

Yet if the Court has not given guidance as to what is required in this area, the Congress has spoken on several occasions, and this branch of the Government has acted in an effort to negate exactly what is being forced upon our school districts today.

Now, Mr. President, I wish Senators would listen to this. What I am about to read is the law of the land. It is unequivocal. It has not been declared unconstitutional or passed upon by the Supreme Court or any other court of the land.

I read now from the Civil Rights Act of 1964, section 401, and I ask the distinguished Senator from Kentucky (Mr. COOPER) to listen to this.

Mr. COOPER. I am listening.

Mr. ELLENDER. This is the law. It has not been declared unconstitutional by any court. This appears in the Civil Rights Act of 1964. As the distinguished Senator from Kentucky knows, when a law is passed by Congress it is the law of the land until the Court acts upon it and declares it to be unconstitutional. The Senator, I am sure, is in agreement with that?

Mr. COOPER. I am familiar with that.

The PRESIDING OFFICER (Mr. TALMADGE in the chair). The Senate will be in order so that the Senator may be heard.

Mr. ELLENDER. Let me read from the act:

> Desegregation means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin. But desegregation shall not mean assignment of students to public schools in order to overcome racial balance.

Mr. COOPER. Mr. President, will the Senator from Louisiana yield?

Mr. ELLENDER. One moment more. Let me read further, I quote from section 407 of the same act. It reads:

> Provided nothing herein shall empower any official—

I emphasize "any official"—

> or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or from one school district to another school district in order to achieve racial balance.

Mr. President, that has not been passed upon by the Supreme Court or any other court in this land. So, in my humble judgment, that is the law of the land.

Mr. COOPER. Mr. President, will the Senator from Louisiana yield?

Mr. ELLENDER. I yield.

Mr. COOPER. I am familar with all those sections. I must say, at the time we passed that act, I thought that it did apply, the words "racial balance," that it meant what it said, those words. But I think the Senator is wrong——

Mr. ELLENDER. I know of no decisions striking down that language. The Senator admits that when Congress passes a law, that law applies and is enforceable until someone challenges it and the Court declares it to be unconstitutional.

Mr. COOPER. That is correct.

Mr. ELLENDER. Without question.

Mr. COOPER. But the Court has interpreted that section——

Mr. ELLENDER. Where?

Mr. COOPER. I will give the Senator several cases——

Mr. ELLENDER. I would like to have a specific citation for reference.

Mr. COOPER. I do not recall them, but I have them at hand. So far as freedom of choice is concerned, this amendment to the bill hinges on freedom of choice. The Court has ruled in the Green case.

Mr. ELLENDER. I am speaking of "racial balance." I am not talking about freedom of choice.

Mr. COOPER. I am coming to it, because it involves busing. There is the Green case. There is the case of the city of Knoxville, which was passed on several years ago on the freedom-of-choice case. There are a number of other cases. I will try to recall them. One involves Gary, Ind. Another one involves the city of Cincinnati. There is one very recent case involving the city of Denver.

Mr. ELLENDER. Those are freedom-of-choice cases.

Mr. COOPER. They interpreted that as——

Mr. ELLENDER. I am speaking of busing.

Mr. COOPER. I am talking about that, too. They interpreted those cases. While they have never directly passed upon them, they did interpret them as to those two words, "racial balance"; that is, that it could not be used for desegregation

purposes. But I do say that they have interpreted racial imbalance as something entirely different from segregation—or desegregation. That was admitted on this floor the other day by many Senators on the southern side.

Mr. ELLENDER. Mr. President, I will challenge my good friend from Kentucky to cite one instance in which this proviso in the Civil Rights Act of 1964 was challenged or directly passed upon by the Court. As for freedom of choice, we have already passed far beyond that.

We are speaking now of balancing the schools.

I repeat, that the law is as plain as law can be written; namely:

Provided, That nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another school district in order to achieve racial balance.

That is the law, and I challenge any Senator to indicate to me where that language was declared unconstitutional by the courts. As a matter of fact, I do not believe that it has ever been placed before the Supreme Court at all.

Finally, Mr. President, I quote from sections 408 and 409 of the current bill. The Senator is familiar with those.

SEC. 408. No part of the funds contained in this Act may be used to force any school district to take any actions involving the busing of students, the abolishment of any school or the assignment of any student attending any elementary or secondary school to a particular school against the choice of his or her parents or parent.

SEC. 409. No part of the funds contained in this Act shall be used to force any school district to take any actions involving the busing of students, the abolishment of any school or the assignment of students to a particular school as a condition precedent to obtaining Federal funds otherwise available to any State, school district or school.

Can there be any language more unequivocal than that which I have just read? Yet the proponents of the pending amendment to the bill seek to negate these plain and rational statements by putting in a phrase to cloud the issue and throw up a smokescreen. They seek to do two things.

First, they seek once again to protect northern school districts from the turmoil and social turbulence affecting public education in the South today.

Second, they seek to provide a peg for Mr. Finch, Secretary of Health, Education, and Welfare—a peg on which to hang his hat so that he may continue the bureaucratic machinations against the South. As I said, this is specious and it is false.

The argument is often made that the South has had 16 years to come into compliance with the law and that these harsh measures are justified. The liberals, so-called, have been found of saying this in the past, but for all practical purposes, the South is now in compliance with the law. The courts and HEW have seen to that at the expense of our public education system over the last 2 years.

A great many changes have taken place in the last 18 months which the figures from 1968 which have been put into the RECORD previously do not show. In fact, we are more in compliance than many other areas of the country with the Supreme Court's dictum. I know this to be true from personal observation, all over Louisiana. Looking at the facts, we note that the argument used against the South can be turned around, New York City, for instance, has had 25 years to deal with de facto segregation. Every other northern city has had the same time span. Yet what do we find but rampant segregation that is only now coming to be acknowledged.

Mr. President, I ask unanimous consent to have printed in the RECORD a table entitled "Negroes in 100 Largest School Districts, Ranked by Size."

There being no objection, the table was ordered to be printed in the RECORD, as follows:

NEGROES IN 100 LARGEST SCHOOL DISTRICTS, RANKED BY SIZE—NUMBER AND PERCENTAGE ATTENDING SCHOOL AT INCREASING LEVELS OF ISOLATION FALL, 1968 ELEMENTARY AND SECONDARY SCHOOL SURVEY

District	Total number of students	Total number of Negro students	Percent of total	Negroes attending 0–49.9 percent minority schools		50–100 percent minority schools		95–100 percent minority schools		99–100 percent minority schools		100 percent minority schools	
				Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total	10,417,750	3,250,319	31.2	418,633	12.9	2,831,686	87.1	2,201,589	67.7	1,798,445	55.3	1,091,978	33.6
New York, N.Y.	1,063,787	334,841	31.5	65,824	19.7	269,017	80.3	146,945	43.9	88,233	26.4	34,033	10.2
Los Angeles, Calif.	635,549	147,738	22.6	7,012	4.7	140,726	95.3	116,017	78.5	77,026	52.1	18,118	12.3
Chicago, Ill.	582,274	308,266	52.9	9,742	3.2	298,524	96.8	263,159	85.4	234,045	75.9	146,152	47.4
Detroit, Mich.	296,097	175,316	59.2	15,781	9.0	159,535	91.0	103,590	59.1	66,069	37.7	18,510	10.6
Philadelphia, Pa.	282,617	166,083	56.8	15,880	9.6	150,203	90.4	99,277	59.8	72,174	43.5	7,201	4.3

Mr. ELLENDER. Mr. President, this table from HEW, reflecting Negro students in the 100 largest school districts ranked by size, and the number and percentage attending schools at increasing levels of isolation as of the fall of 1968 in the continental U.S. elementary and secondary schools, reflects the following:

In the five largest school districts in the continental United States; namely, New York City, Los Angeles, Chicago, Detroit, and Philadelphia, there are enrolled 1,132,244 Negro students. This represents 39.3 percent of the total student enrollment of these five largest northern school districts and 18 percent, or nearly one-fifth, of all Negro students in the United States. These 1,018,005, or 89.9 percent of the total Negro enrollment in these five districts, representing 16.2 percent of all the Negro students in the United States, attend schools in these 5 largest districts that are 50 to 100 percent Negro or other minority group segregated; 728,988, or 64.4 percent of the total Negro enrollment in these five largest northern school districts, attend schools that are 95 to 100 percent segregated, and these 728,988 Negro students represent 11.6 percent of all the Negro students in the continental United States. Only 114,239, or 10.1 percent of all the Negro students in these five largest districts, attend majority white schools.

There is a total enrollment of 2,878,324 students in these five largest U.S. school districts and even though the total Negro student enrollment constitutes 39.3 percent of total enrollment, only 3.9 percent of total enrollment represents Negro students attending majority white schools.

Mr. President, I think the situation there is just as bad, if not worse, than in any area of the United States. All we can ask is fairness and that the laws be applied with equal vigor all over the country.

Mr. STENNIS. Mr. President, I yield 10 minutes to the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming is recognized for 10 minutes.

Mr. HANSEN. Mr. President, I will vote against the amendment of the Senator from Maryland. Although I believe it is well intentioned, it is time that the Congress face up to the fact that the Federal effort to force integration through the school systems has been a dismal failure, depriving black children and white children alike of an opportunity to receive a quality education.

On February 26, I introduced into the RECORD an article by Mr. Vermont Royster of the Wall Street Journal, entitled "Forced Integration; Suffer the Children." Certain passages of this article are worthy of our further consideration. Mr. Royster stated what he called a simple proposition:

It is that it was, and is morally wrong for a society to say to one group of people that because of their color they are pariahs—that the majesty of law can be used to segregate them in their homes, in their schools, in their livelihoods, in their social contacts with their fellows. The wrong is in no wise mitigated by any plea that society may provide well for them within their segregated state.

He points out that the mistake came when the law was applied "to compel not merely an end to segregation but an end to separation by forced integration." He said further:

It was at this point that we fell into the abyss. The error was not merely that we

created a legal monstrosity, or something unacceptable politically to both whites and blacks. The tragedy is that we embraced an idea morally wrong.

He asks this pointed question:

Is it moral for society to apply to children the force which, if it were applied to adults, men would know immoral? What charity, what compassion, what morality is there in forcing a child as we would not force his father?

Mr. Royster notes that this concept has headed in the direction of a totalitarian state. He said:

No one thinks it moral to send policemen, or the National Guard bayonets in hand, to corral people and force them into a swimming pool, or a public park or a cocktail party when they do not wish to go. No one pretends this is moral—for all that anyone may deplore people's prejudice—because everyone can see that to do this is to make of our society a police state. The methods, whatever the differences in intent, would be no different from the tramping boots of the Communist, Nazi or Fascistic police states.

Mr. Royster says the essence of the school integration program "is that we have tried to apply to our schools the methods we would not dream of applying to other parts of society. We have forced the children to move."

I think we need to refer here to the reasoning of Mr. William Raspberry, a columnist for the Washington Post, and himself a member of the Negro community. He questions whether a reason that the schools are doing such a poor job of educating black children "is that we have spent too much effort on integrating the schools and too little on improving them." He asks this:

Isn't it about time we started concentrating on educating children where they are?

And he says forced busing "has accomplished nothing useful when it has meant transporting large numbers of reluctant youngsters to schools they would rather not attend."

Mr. President, I am convinced that the adoption of the language, as passed by the other body, will again focus the attention of Federal education efforts on the need to provide quality education to all of our children in all of our schools. This is the job of the school system.

Mr. President, the moment of truth is here. Fairminded people concerned about our children have spoken out against a Court decree that is a tragic failure.

It is ill starred.

Following in its wake have occurred violence, rioting, school closings, and death.

Those whose lives well-meaning people hoped to improve oftentimes have been blighted.

Fear grips the hearts of children, black and white alike.

Tax dollars are being wasted.

Noted black leaders inveigh against these misdirected expenditures. Bayard Rustin says only a good education can help propel the black man upward to full realized equality. He must be able to compete.

Mr. President, I have the greatest respect for those who have championed the fight for equality for all our citizens. No civil rights bill has had the stamp of approval by this body since I have been here without my support.

I call upon my colleagues now to harken to the voices of the people—white voices and black voices—the voices of people whose first concern is for their children.

Let us rise above the pride of earlier positions that are now proven wrong. Let us look at what is happening in America. God grant us the humility to turn from a wrong course and the courage to change.

Mr. MATHIAS. Mr. President, I yield 10 minutes to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 10 minutes.

Mr. SCOTT. Mr. President, the so-called Whitten amendments, as passed by the House and approved by the Senate Appropriations Committee, are virtually identical to the provisions rejected by the Senate, and Congress as a whole, only a short while ago.

During the Senate debate of last December, I proposed a perfecting amendment similar to the amendment now pending. The amendment seeks to insure that implementation of sections 408 and 409 will comport with constitutional requirements.

Since our initial consideration of the matter, nothing has transpired which renders the Whitten amendments any less repugnant.

In connection with the earlier Labor-HEW appropriations bill, sections 408 and and 409 raised the same essential issue. The question was then—and is now—whether the Senate is going to legislate in accordance with constitutional principles, or whether we are going to enact provisions which conflict with the obligation of every school district to eliminate unconstitutional segregation.

In substance, sections 408 and 409 as approved by the Appropriations Committee would require the acceptance of ineffective desegregation plans for the purpose of complying with title VI of the Civil Rights Act of 1964.

Yet, such plans, commonly known as freedom of choice, have proved insufficient in terms of accomplishing school desegregation under title VI. Moreover, the Federal courts, including the Supreme Court, have ruled that freedom-of-choice plans are not constitutionally permissible unless they bring about an end to discrimination.

Sections 408 and 409 would remove the constitutional test of effectiveness as set by the Supreme Court and, in its stead, authorize the adoption of freedom of choice across the board—in every federally assisted school system, regardless of whether it achieves an end to discrimination.

As recently as last October 29, the Supreme Court ruled in the case of Alexander against Holmes, that "the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools." There may be legitimate questions with respect to the Court's terminology. But the Court's order was crystal clear, and that order cannot be effectuated in most cases under mere freedom of choice.

Make no mistake about it: unless remedied, sections 408 and 409 would represent an overwhelming retreat on school desegregation. They would reverse the Nation's longstanding commitment to equal educational opportunity. They would deepen the racial divisions which burden and bedevil this American society. And they would serve to encourage resistance to the law and to the decisions of the Supreme Court.

Shorn of their emotional appeal, the Whitten amendments are nothing more nor less than an attempt to preserve separate schools for whites and Negroes.

And I must add that they would conflict directly with the intent of the Stennis amendment, insofar as I understand its intent.

Senators who voted for that amendment with the understanding that existing school desegregation policies will be applied uniformly with equal force, should now understand that the Whitten amendments would nullify that intent.

Of course, the Whitten amendments cannot undo the work of the courts. But their enactment would, of course, make impossible the application of existing title VI requirements to the North, in the same way that these requirements now apply to formerly de jure school systems. Considering the avowed purpose of the Stennis amendment, it would indeed amount to monumental hypocrisy for the Senate to approve the Whitten amendments, the object of which is to do nothing about school segregation, whatever its origin and wherever it may prevail.

The Whitten amendments, we must understand, would not only conflict with and undermine effective enforcement of the title VI nondiscrimination provisions under HEW. They would also set in motion a severe psychological impact, undercutting all the efforts of local authorities and educators to negotiate in good faith for compliance with the law. Hundreds of local school boards, in the South and across the country, have made such efforts, often against strenuous odds, to cooperate in fulfilling their constitutional obligation to minority students.

In enacting the Whitten amendments, the Congress would be turning its back on those who have sought to abide by the law—while at the same time encouraging those who have chosen to resist.

Surely, at this stage in our history, the Whitten amendments are patently unacceptable. They are remnants of an earlier era in our Nation's history, and inappropriate to the times. They purport to resurrect standards rejected long ago—rejected because they effectively denied to many Americans their constitutional right to an equal education.

I urge the Senate to accept the amendment offered by the distinguished Senator from Maryland. Two amendments will be offered by the Senator from Maryland.

Mr. President, the only addition to these amendments is the phrase "except as required by the Constitution." We find ourselves, it seems to me, in the rather ridiculous position of having it argued

on the floor that the Government of the United States, the administration of the United States, and the President of the United States do not want language in the act "except as required by the Constitution." I want to reject that thesis with all of the force of which I am capable. I am unwilling to accept any inference whatever, that when the Secretary of Health, Education, and Welfare writes a letter to the chairman of the Subcommittee on Appropriations on February 20 and says he wants that language in, he means anything other than what he clearly and specifically says. He has said the same to me on many occasions.

Moreover, this is the policy of the administration; this is the desire of the administration. As the party's leader on the floor of the Senate, I accept that responsibility one more time of making that statement, which does not mean we are not all acting in good faith to achieve the acceptance of our several points of view which might differ. But I think it is about time we ceased that kind of an argument which undertakes to peer into the mind of another official and assert that that official means anything except what he authorized and caused to be said.

"Except as required by the Constitution" is the language. How can we object to language that says we shall live and abide by, function and operate under the Constitution of the United States?

Why, after all, would there be any objection to the addition of this language unless the purpose is other than has appeared in the debate? This is not to impugn the motives of anyone, but simply to go back to the fact that the mores of our varying communities in America have created for us problems which are now, happily, in many parts of the country in the process of solution.

The PRESIDING OFFICER (Mr. McINTYRE in the chair). The time of the Senator has expired.

Mr. MATHIAS. Mr. President, I yield the Senator 5 additional minutes.

The PRESIDING OFFICER. The Senator is recognized for 5 additional minutes.

Mr. SCOTT. Mr. President, there are millions of people of good will in America in every region of the country; and I come from one of those regions and I moved to live in another; and I think I understand something of the underlying problems which are here, for which I have the greatest possible sympathy. But there are millions of people who wish this matter could be settled right. I think it was Abraham Lincoln who said that no question is settled until it is settled right. We settled this question last December, for the purpose of this bill, when we voted 52 to 37 to abide by the Constitution. All I am asking is that we do it again.

It has been mentioned here that there are black leaders who say, "Oh, we are interested in good schools." That is all anyone should be interested in, but one of the essentials of a good school is that the people should have a right to an equality in the manner in which their right to an education is handled. If it goes beyond that, if the reference to black spokesmen indicates there is some growing, and I think unfortunate tendency toward black separatism, then the blacks who advocate that are falling into the same mistake the whites made before them in arguing black or white separatism rather than that we find ourselves preferably in a condition of affairs in the United States where all people are treated alike and where there is no need for separatism.

That is what I feel we are trying to do here.

Therefore, I make these two points: First, to proceed as required by the Constitution, it seems to me, would be the simplest and yet at the same time the highest obligation of the Senate of the United States. To avoid separatism, be it black or white, should be an emotional as well as a constitutional commitment of Americans.

We have gone through difficult times. People in my family fought to separate from the Union. People in my family held these beliefs. But the people of all families of America generally have discarded those beliefs as the decades have moved into a century and more; and the time is now for us to see that the Constitution is the supreme law of the land, as we are constantly insisting should be recognized by the judicial and executive branches. Let us be as good ourselves as we demand that others be. Let us abide by the law of the land and let us proceed as required by the Constitution. I hope this just position, this constitutional provision, this moral imperative will be enacted into this act. Therefore, as I said before, I support the Mathias amendment, and I yield the floor.

Mr. STENNIS. Mr. President, I yield myself 3 minutes.

I have the greatest admiration and affection for the Senator from Pennsylvania. Last week the Senator made one of the finest arguments I have ever heard to protect, maintain, and perpetuate the segregated school system in his wonderful State. That was the net effect of it. He offered a substitute to the amendment that was pending that was nothing more, with great deference, than a restatement of the law.

Today he again argues here for equal educational opportunities. At the same time, in his own State—and I speak with great deference to it and to him—in Philadelphia the records of HEW show that there are 7,206 black students there in nine of their schools that have 100 percent Negro student bodies. In that same great city, there are 57 schools with an enrollment of 68,000 students that have 99 to 99.9 percent Negro student bodies.

According to the Senator's argument, that condition will exist for 50 years. I have not heard of anything that Pennsylvania has done since 1954 to remedy this situation. The Civil Rights Commission—certainly not a southern institution—says over and over and over again that segregation is getting worse in places in the North year, year after year. These are not my words; these are the words of the Civil Rights Commission. The Office of Education in HEW, in its annual report of 1969, I believe, pointed out that in some places it is getting worse. I am not certain that is true in Philadelphia. But my proposition is this: According to their argument, they give great faith—and I know they are sincere—to the idea of equal opportunity for all; but when it comes down to doing something about it in their States, they say "No, no, no."

They have a precedent, by this clause, that it is unconstitutional in the South, and they want to stand on it. I know that is what HEW stands on. Whether the Senator from Pennsylvania means to or not, they stand on this clause all the time.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. STENNIS. Mr. President, I yield myself 2 minutes. They point their finger at us and say, "You have unconstitutional segregation." The State of New York had a law on its books until 1938 that permitted equal but separate schools for the colored people. I know it is bound to have contributed to that pattern. The more modern New York passed a State law last year making it unlawful to bus these children around, and providing for freedom of choice. These same voices come in here and say, "We stand on high and holy ground. You are unconstitutional in the South. We are holy in the North. You must not frown on the Court." I have great respect for the Supreme Court, but, like every other human institution, they can make mistakes, and they made a mistake here—breaking into school sessions, running children out of their own schools, busing them to the other side of the county, taking respectable teachers who had solemn contracts to teach in X school and saying, "No. You live here, but we are going to put you in Y school 20 miles away. Get there the best you can." These are solemn contracts.

We have gone over this before. This is not only tyranny, the way it is carried out, but it is in violation of the spirit of our laws. It is killing education.

Mr. President, I try to be a man of patience. The so-called Whitten amendment has the respectability of having passed the House of Representatives twice.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. STENNIS. I yield myself 1 minute.

As I said yesterday, it is here once more for our more serious consideration. The best defense I have heard on this floor—talk about astute lawyers—was here last week in arguing against those amendments, made by Senators from these same States. I am not referring to the Senator as an individual, but those from these same States protected to the last ditch every segregated school they had; but they pointed to us in the South and said, "You have dirty linen. You are discriminating. You are unfair. Our schools are integrated."

Mr. President, we are trying to maintain the concept of the neighborhood school, the community school, where all children will have better schools and better public education.

Mr. President, I yield 10 minutes to the Senator from Arkansas (Mr. McCLELLAN).

Mr. SCOTT. Mr. President, will the Senator withhold that and permit me to reply very briefly on the question of Philadelphia?

The PRESIDING OFFICER. Who yields time?

Mr. SCOTT. My fair home city is involved.

Mr. MATHIAS. Mr. President, I yield 3 minutes to the Senator from Pennsylvania.

Mr. SCOTT. Mr. President, the distinguished Senator from Mississippi has been my friend for more than four decades, and I would not in any way want to suffocate him by the warmth of my embrace, but we are friends. I understand his situation. I understand how well it will read in Mississippi. At the same time, I call his attention to the fact that here in this body, when the Senate gave its most serious deliberation to the Whitten amendment, it adopted the same amendment which we have before us now by a vote of 52 to 37.

Reference has been made to my city of Philadelphia. I respond proudly as a citizen of that city that indeed we have spent millions of dollars to attract, and have attracted, many people to return to the city to live who had heretofore moved, or in some cases the charge might be made fled, to the suburbs.

Moreover, our city has allocated, through its city council, many large sums of money for the purpose of correcting even the unintentional, so far legal but entirely deplorable de facto segregation, which I regret just as much as the Senator does.

But I point out what I said a moment ago: That the Whitten amendments, unless we amend them as we have proposed, would conflict directly with the intent of the Stennis amendment as adopted heretofore, because Senators who voted for the Stennis amendment with the understanding that existing school desegregation policies will be applied uniformly, with equal force, should now understand that the Whitten amendments would nullify that intent. They would not undo the work of the courts, but their enactment would make impossible the application of existing title VI requirements to the North in the way the Senator advocates, in the same way that those requirements are now applied to formerly de jure school systems.

Therefore it would, to borrow a phrase from others, amount to "monumental hypocrisy" for the Senate to apply the Whitten amendments, the effort of which is to do nothing about school desegregation, whatever its origin or wherever it may prevail.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. STENNIS. Mr. President, I yield 12 minutes to the Senator from Arkansas.

Mr. McCLELLAN. Mr. President, I do not think any debate that may occur here today will change any votes. But we are considering a crucial issue, and I rise primarily for the purpose of making my positon clear for the record, because there will be in time, in my judgment, some measure of reaction to what is about to occur here. There is going to be a backlash, and some who are so strongly advocating forced busing will find that they may be injured more by this unconstitutional operation than those whom they seek to impose it upon.

Mr. President, the crucial issue being weighed and debated by this body today is, shall busing of schoolchildren from one school district to another, solely for the purpose of achieving a racial balance, be employed and compelled as an instrument of law and national policy? Further, shall such a policy be enforced under penalty of withholding Federal funds from any school district that defaults in compliance when ordered to do so?

That is the issue, Mr. President.

I strongly oppose such a harsh, compulsive, and improvident national policy.

Mr. President, what purpose is served by busing schoolchildren? What cause is served by denying freedom of choice? The practice of busing schoolchildren to achieve racial balance has done nothing whatsoever to contribute to the quality of education, or to enhance the ability of schoolchildren to learn. Quite to the contrary, the arbitrary and indiscriminate reassignment of schoolchildren and schoolteachers has proven to be most disruptive and degrading to the educational process.

Earlier this month, I noted an incident carried on the television networks, where a mother of five children was protesting a pupil assignment system that had her five children going to five different schools. Who can possibly benefit from such an arrangement? The answer is no one.

It has been pointed out that in 17 school districts of Florida, now under court control, 72 percent of the black children attend schools that are virtually all black. The public schools of Florida are being thrown into turmoil, as pupils and teachers are shuffled madly in an utterly senseless effort to achieve racial balance, no matter what the cost in consequenses of money, disruption, and demoralization.

If this madness—if this complete and utter disregard for orderly educational process—is good for Florida and other Southern States, then it must be equally good for the North, the East, and the West.

Mr. President, I cannot accept the argument that, "Oh, well, ours is de jure, yours is de facto." If it is wrong, it is wrong either way. If it is right, each State should pass a law compelling busing into those districts that are all black from the districts that are all white, and into the districts that are all white from the districts that are all black. If it is to benefit education, why not do it? You want to compel us to do it, because you say we have a different system that is unconstitutional.

We do not have that system now. We are doing our best in the South. Whatever faults we may have had in the past, we are doing our best today. But most of you are doing absolutely nothing to bring about a correction of the racial imbalance that has come about by a pattern of living in your communities.

Yes, Mr. President, there is going to be a backlash from what we are doing in this matter of forced busing. No good is going to come from it.

And if we accept and extend that premise, then let us contemplate for a moment what would happen in Washington, D.C., where 94 percent of the students are black and only 6 percent are white.

How will the courts and the Department of Health, Education, and Welfare achieve racial balance here in the District? If it is good, if it is wholesome, if it is necessary to give the best education, there is no right to hide behind the statement: "Well, we do not have that system de jure; therefore, we do not need to do anything about it." Should there be a law to require the busing of children who are black from the District of Columbia into the suburbs, where most of the pupils are white? Who wants to do that? No, it will not be done. In the first place, it is too expensive; in the second place, there is not any real concern about it. We in the South are the culprits. The idea is to punish the South. It has been that way all through the years; it is that way now.

Will we mobilize the military and its vast equipment to transport children hither and yon from the District of Columbia in a madcap effort to achieve this will-o'-the-wisp objective of making sure that we have "racial balance"? If forced busing is constitutional, then the power to do that exists. If it is right, if it is good, if it is necessary for the education of children, so as to give them the best education, then it should be done. But I do not believe that anyone who advocates this system will dare to advocate that it be done here in the District of Columbia. Surely the insanity of such a scheme—such a process—is apparent.

I am sure that most parents are apprehensive about having their children bused even short distances to attend their own neighborhood schools. But the need for this is obvious: We must get the children to school; and if it is too far to walk, transportation should then be provided. But to force a child of school age to ride on a bus because some ivory-tower social theorizer thinks it might somehow aid the cause of civil rights by forcing integration in such a fashion is a far different thing. It is an abomination to use a child in such a manner.

In so using the child, we are depriving him of educational time that could well be spent in the pursuit of classroom study and activity, instead of letting him sit idly on a bus, traveling a long distance from his own neighborhood for an end that cannot be justified.

Congress has spoken on this issue time and again. Laws have been enacted specifically denying funds and authority to officials to require the busing of children. Time and again those laws have been ignored.

Efforts are still being made to enforce someone's concept of civil rights; to integrate the races by the insidious and indefensible method of using schoolchildren as pawns to perpetrate and enforce a system that is demoralizing and destructive.

Who suffers? The schoolchildren, the educational system, and eventually Americans of all colors.

The PRESIDING OFFICER (Mr. McGEE in the chair). The time of the Senator has expired.

Mr. STENNIS. I yield 3 additional minutes to the Senator.

Mr. McCLELLAN. Whose purpose is served by such an inane policy? The child? The teacher? The taxpayer? Certainly and emphatically not, in each instance. Indeed, it is difficult, if not impossible, to discern any beneficiary from such a scheme except perhaps the bus manufacturers and gasoline distributors. The cost could be stupendous, as indicated by an article in a recent edition of the New York Times headlined "Los Angeles Told It Must Integrate All Schools by 1971."

According to this article, Superior Court Judge Alfred E. Gitelson ordered forced integration which would "cause massive disruptions in the Los Angeles system, the Nation's second largest. The district is currently about 22.6 percent Negro and 20 percent Mexican American, and by the definition of racial imbalance adopted by Judge Gitelson, 99 percent of the schools are segregated.

School Superintendent Robert F. Kelly said that the order would require the busing of more than 240,000 of the district's approximately 674,000 students, and warned that this would cost the district $40 million in the first year and $20 million every year thereafter. The district is already facing a deficit next year of about $34 to $54 million and the added costs would mean the virtual destruction of the school district.

Mr. President, I ask unanimous consent that the entire article be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. McCLELLAN. Instead of trying to add further confusion and turmoil to our educational system we should be lending our best efforts to rectifying and straightening out the stupendous mistakes we have already made.

The Federal Government has spent billions of dollars trying to improve the quality of education in America; $41.2 billion have been appropriated during the past 5 years for all Federal educational programs. I am sure we have had some success, but in all too many instances we are witnessing a rapidly deteriorating school system. Why? Primarily because they have taken control of the schools of America away from the people, the patrons of the school. They are dominated now from Washington, D.C.

Go back 10 years. The quality of education then was much better than it is today. It is now deteriorating everywhere. Why? Not because the money has not been provided. It has. You have more money, you have better facilities, you have better everything—except discipline and quality of education. Why? There is disrespect for the system as it is being operated today.

As an example, let us look at the Nation's Capital—shakedowns, robberies, knifings and shootings are becoming commonplace among the students. Police details have been assigned to patrol the hallways—and still the violence continues. Ten years ago we did not have the police guarding the schools anywhere. The schools in the Nation's Capital are a shambles. They are a national disgrace.

Does anyone truly believe that shifting children around the city and the suburbs will alleviate this problem? Such a program will only fan the fires of violence, hostility, and racism.

Mr. Joseph Alsop, in a column entitled, "Interracial Violence in Schools Requires a Nationwide Survey," January 21, 1970, stated:

> The fact is that something perilously close to a race war has now begun in just about every integrated high school in the United States. This is not a Southern problem. It is a nationwide problem, with future political implications so grave that we dare not go on being ostriches about it.

Mr. Alsop also notes with alarm the "hair-raising" estimate that one-half the center city high schools and about 30 percent of the suburban high schools had serious hard-drug problems.

In calling for a nationwide survey of schools Mr. Alsop noted:

> Spot checks failed to reveal any integrated high school, anywhere at all, that was free of the poison of simmering racial conflict. Mercifully, it is mostly just simmering—taking the form, that is, of minor aggressions between whites and blacks.
>
> In too many places, moreover, the simmering conflict has already boiled up, or may soon boil over, into major violence between whites and blacks. And in New York, Chicago and elsewhere, there are actually high schools where the race war is so serious that large numbers of police have to be continuously stationed in the school buildings.

The PRESIDING OFFICER. The time of the Senator from Mississippi has expired.

Mr. STENNIS. Mr. President, I am authorized by the Senator from Washington to yield time to the opposition.

The PRESIDING OFFICER. Is the Senator yielding on the bill?

Mr. STENNIS. Yes, on the bill.

Mr. MAGNUSON. Mr. President, I yield the Senator from Mississippi 30 minutes on the bill.

Mr. STENNIS. I yield 2 additional minutes to the Senator from Arkansas.

Mr. McCLELLAN. Mr. President, it is simply unbelievable that anyone could think for even a moment about compounding this already explosive situation by adding the racist idea of busing schoolchildren across district lines.

Mr. David Lawrence, in a column last month, entitled "Frustration in Southern Schools," commented on a letter written to President Nixon by a school teacher with 14 years experience in Atlanta, Ga.

The teacher noted that Atlanta has made every effort to meet each requirement by the Federal Government, and the school system at large has adopted the 58 percent white to 42 percent Negro ratio required for the faculty. But it appears this is not enough, as the Federal court now is ordering that the faculty of each individual school must be integrated to that percentage and, as the Atlanta teacher writes, "worst of all, in the middle of the school year."

She added:

> Mr. Nixon, how can anyone fail to see what complete havoc will result from the transferral of approximately 1,700 teachers from one school to another in midyear. Any teacher can tell you what emotional turmoil this will create in the classrooms of Atlanta for both teachers and students alike. It surely would not take a teacher to understand the delay in the learning situation itself which would, of necessity, result from a change of this type.

She adds:

> If it is quality education—the type of a situation that is best for each child in a school system—that the Federal Government is concerned about and is making an effort to achieve, then there needs to be some rethinking done, because such a step as this cannot fail to bring about the opposite result.

Mr. President, a modest amount of wisdom and simple justice dictate the complete abrogation of the policy and practice of forced busing of schoolchildren for the sole purpose of achieving a racial balance.

The pending amendment, "except as required by the Constitution," is deceptive. It is a snare and a delusion. It conveys the implication that the Constitution "requires" busing to achieve racial balance. I refute that the Constitution either expressly or by implication contains any such requirement.

I hope that sections 408 and 409 will be retained in the bill without dilution or amendment.

EXHIBIT 1

[From the New York Times, Feb. 12, 1970]

LOS ANGELES TOLD IT MUST INTEGRATE ALL SCHOOLS BY 1971—COURT ORDERS PLAN BE READY BY JUNE 1—RULING WOULD REQUIRE MASS BUSING

(By Steven V. Roberts)

LOS ANGELES, February 11.—The Los Angeles school system was ordered today to present a plan by June 1 for the integration of the district's 555 schools.

Superior Court Judge Alfred E. Gitelson issued the landmark ruling in a suit instituted by the American Civil Liberties Union in behalf of 12 Negro and Mexican-American children.

He said the plan should be in effect for the school year starting next September, and under no circumstances later than September 1971.

If carried out, the order would cause massive disruptions in the Los Angeles system, the nation's second largest. The district is currently about 22.6 per cent Negro and 20 per cent Mexican-American, and by the definition of racial imbalance adopted by Judge Gitelson, 99 per cent of the schools are segregated.

EARLY APPEAL IS SEEN

School Superintendent Robert F. Kelly announced that he would recommend an appeal of the ruling "at the earliest possible time."

He said that the order would require the busing of more than 240,000 of the district's approximately 674,000 students.

Dr. Kelly warned that this would cost the district $40-million in the first year and $20-million every year thereafter. The district is already facing a deficit next year of about $34-million to $54-million and the added costs "would mean the virtual destruction of the school district," the superintendent declared.

The decision comes at a time when pressure is mounting on several fronts to desegregate public schools in Northern districts. Last month, a Federal judge here ordered the integration of the Pasadena school system

and requested that a plan be completed by next Monday.

Earlier this week in Washington, Senator Abraham Ribicoff of Connecticut announced his support of legislation that would provide uniform national desegregation standards, regardless of the cause of the racial imbalance.

In the past, Northern districts have argued that racial imbalance outside the South was de facto, or caused by residential patterns, rather than de jure, or caused by legal discrimination.

DISTINCTION IS VOIDED

Judge Gitelson not only dismissed the importance of that distinction today, he also found Los Angeles guilty of de jure segregation by not taking affirmative steps to relieve racial imbalance.

Moreover, the judge added: "The board has expended millions of tax funds for the protection, maintenance and perpetuating of its segregated schools, selecting and purchasing sites and building schools in segregated neighborhoods, knowing that said schools would be upon opening segregated or racially imbalanced."

The A.C.L.U. estimates that as a result of residential patterns, 85 per cent of the minority students here attend segregated schools.

In his opinion, Judge Gitelson said that the right to "equal educational opportunity is an unalienable right" guaranteed by the Fifth and Fourteenth amendments, as well as by the California State Constitution and the rules of the State Board of Education. He continued:

"The right of all students to attend school and to receive the opportunity to acquire equal education, equal to the opportunity offered to all other students, irrespective of race, color, creed, economic or social circumstances, is a fundamental right, a legal right, a species of property, equal to, if not greater than, other tangible property rights, it being the right to be a human being, and requires that he receive said opportunity in integrated schools."

The judge also relied heavily on decisions of the Supreme Court in Brown v. Board of Education, the original desegregation case, and other cases, in which the Court ruled that segregated schools were inherently unequal.

In its brief, the A.C.L.U. pointed out that reading scores for students in schools with predominantly Negro and Mexican-American enrollments ranked far below those for students in predominantly white schools. In several minority-schools, students scored lower than 97 per cent of the children tested across the country.

Of the six high schools with the highest dropout rates in the city, five of them had enrollments that were more than 93 per cent minority group students.

On another critical point, Judge Gitelson said that the prospect of whites fleeing to the suburbs as result of his rulling could have no bearing on the decision.

The Board of Education had argued that such a flight would ensue, while the A.C.L.U. had contended that if all schools in the district were integrated, whites would have no "place to flee to."

The organization acknowledged, however, that the court's ruling would not affect schools outside the Los Angeles city district.

The suit had asked Judge Gitelson to rule that a racially imbalanced school was one in which the minority group enrollment was less than 10 per cent or more than 50 per cent. Under that definition 72 per cent of the local schools would be imbalanced.

Mr. STENNIS. I yield 10 minutes to the Senator from Georgia.

Mr. TALMADGE. Mr. President, at one time, every State in the Union had laws classifying children by race for assignment to public schools. In 1954 the Supreme Court held, in the Brown case, that children may no longer be classified by race for assignment to public schools. Since that time, all such things as de jure segregation in the public school facilities in America have been outlawed.

Ten years later, in the Civil Rights Act of 1964, Congress clarified that decision. Two provisions were written in the act defining what desegregation meant and what it did not mean. I ask unanimous consent that those two provisions of the Civil Rights Act be printed at this point in the RECORD.

There being no objection, the provisions were ordered to be printed in the RECORD, as follows:

SEC. 401. As used in this title—

(a) "Commissioner" means the Commissioner of Education.

(b) "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.

* * * * *

Provided, That nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards.

Mr. TALMADGE. Mr. President, subsequent thereto, the Department of Health, Education, and Welfare, and in some instances our Federal courts, came up with the strange thesis and conclusion that if there were a certain amount of black schools or white schools or a relatively high percentage of black students in a particular school or white students in a particular school, it constituted a dual school system. But that was applicable only in the South and nowhere else in the Nation.

Statistics have been cited on the Senate floor, time after time, that demonstrate we have a great deal more all-black schools than all-white schools outside the South than we do in the South. But the required assignment of teachers and assignment of students from school to school have been made applicable in the South, and in the South alone. They have held that where we had at one time a de jure system of segregation we must go in and reassign students in order to have a mathematically balanced system. What they have failed to realize is that at one time every State in the Union had a de jure system of segregation.

We have heard a good deal of talk about neighborhood patterns as a defense to the high degree of schools with black students and white students outside the South. We have neighborhood patterns in the South, also. The Brown decision held that we must be colorblind in the schools and operate just schools, neither white schools nor black schools, just schools.

But in recent years, they have forgotten that the Brown decision had said we must be colorblind. And, in the South and in the South alone, they have counted the number of white teachers and the number of black teachers, the number of black students and the number of white students, and they have come up with a strange order that we must reassign x number of teachers to some other school and x number of students, black or white, to some other school. That decision has been made in the midst of the school year and it has created utter chaos in the public school system.

I have received thousands of letters, telegrams, and telephone calls from constituents in my State. I picked out a few of them to demonstrate some of the horror, some of the tyranny, and some of the inequity that has occurred.

I hold in my hand a letter from a La Grange, Ga., mother. She has six children, the oldest is 15 and the youngest is 7. Her husband is in the Air Force in Taiwan. She works in a doctor's office and earns $67.39 a week to help support her family.

They have assigned the six children to five different schools, even though she lives virtually within the shadow of a school.

It will require $18 a week plus $8.50 for lunch money, making a total of $26.50 for cab fare and lunch money out of an income of $67.39 a week.

Mr. President, I never thought I would live to see the day in this country of ours where six schoolchildren in one family would be compelled by some court order or some HEW authority to have to go to five different schools.

I ask unanimous consent to have the entire letter from this La Grange, Ga., mother printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEAR SIR: In reference to our telephone conversation of the night of Jan. 29, 1970, I am replying in writing to our conversation that night.

(1) Due to the fact I have six children of Elementary & Junior High school age.

(2) In Sept. 1970 I will have my six children attending five different schools in our school zone.

(3) Enclosed is a copy of the schools and the distances from my home to each school. Plus the total number of miles I would have to travel before going to my job at 9:00 a.m.

(4) Due to my income, I could not pay anyone to provide transportation to five different schools.

(5) By local cab the rate is $3.00 per child round trip, this would be $18.00 per week. Plus $8.50 for lunch money. This would be at the present rate $26.50 for cab fare and lunch money. The cab co. doesn't know if this will still be the rate per child in Sept.

(6) My present wage is $67.39 per week. This would leave me $40.89 per week to feed, clothe, and buy gas for the week in question.

(7) I have no one to take my children to school but myself as I could not afford for the children to go hungry while I paid for their transportation. This would mean that I would have to take them to school myself, a distance of 10½ miles before going to work, plus leaving my job in the afternoon and going 10½ miles again to pick them up.

(8) As the wife of a member of the U.S. Air Force, serving in the Far East, living by myself with my children and trying to keep our family together, I have to work to help provide for the bare necessities of life. We bought our home on Park Ave. so our children in the elementary school could go to

South West School which is in walking distance of our home.

(9) I must strongly protest to the extra hardships these changes in school will place on my children and myself.

(10) My youngest child, age seven (girl), will have to attend Kelly which is in one of the worst parts of the city. She is very small for her age, weighs only 33 lbs. and is a very nervous child. I fear for her safety and health in attending a school so far from her older brothers and sister who has seen to her safety since she started to school.

Any help you can give me in this matter would be greatly appreciated.

Mr. TALMADGE. Mr. President, I hold in my hand another letter from East Point, Ga., which I will read:

EAST POINT, GA.

DEAR SIR: My first obligation is to my God, second to my country and third to my family. I have prayed to God and I have fought for my country. It is now time to fight for my family.

We believe totally in the constitutional framework of our nation, and intend to work as responsible citizens within that framework.

As you know, anything that threatens individual worth, dignity and equality, and anything which threatens the neighborhood school is a threat to our whole society.

I support the concept of a unitary school system which shall provide equal educational opportunities for all.

I do not believe that humans can be mechanized and regimented in accordance with mathematical racial balance. I believe that this balance is a denial of individual worth and equality. The implementation of a mathematical racial balance of teachers and students will be utterly chaotic and will prevent the continued growth of quality education in our schools. We the people are sick and tired of this political demagoguery.

As an American citizen, I urge you to act immediately on this very serious matter.

Mr. President, I hold in my hand another letter from Athens, Ga., which states in part:

FEBRUARY 10, 1970.

DEAR SIR: I live in Athens, Georgia, and my two children age 11 and 7 are being bused across town when there are 3 schools closer to our home. For some reason our subdivision was picked to be bused (we are white) to East Athens and a group over there (black) is bused to the school we attended last year . . . These children as well as 136 others from University Heights were taken away from their friends, band, Girl Scout troops, and teachers just because a school board said so. Don't we have any rights at all?

Mr. President, I hold in my hand another letter from Gordon, Ga., in which is enclosed a list of bus assignments for Wilkinson County. As I look at the list, I find one that has a round trip of 86 miles a day, and many others nearly that far. The average for a school bus traveling in Wilkinson County, under this strange ruling, is about 50 miles a day.

Let us look at the bus that travels 86 miles. A schoolbus must stop and start. It drives relatively slowly so that in all probability it does not average more than 20 to 25 miles an hour. That would indicate that this particular bus, and many others like it, would have to travel 3 to 4 hours a day to get the children to and from school. In other words, they probably spend more time on the schoolbus than in the schoolroom.

Mr. President, what is happening to our country when we think that the principal purpose of a public school is to haul children around somewhere?

The purpose of the public school is not a sightseeing endeavor nor is it just a bus ride. The purpose of a public school is to educate our children.

I hold in my hand another letter from Atlanta, Ga., which states in part:

FEBRUARY 23, 1970.

DEAR SENATOR: My problem goes very deep—I have a daughter, Mrs. Dorothy C. Gilbert, who teaches in the Atlanta System. She taught 3 years at Roy City, Ga., 1 year at Ocilla, Ga., then moved to Atlanta and had one year at Marietta, Ga., and has been with the Atlanta System 21 years.

The problem that is so bitter is they have moved her from her school in 3 blocks from her home and put her in a school all the way across town. She is 52 years of age and there's no reasonable excuse on earth to have her make that change.

Mr. President, that is a mere sampling of the many thousands of letters I have received from constituents in my State. Other Senators in the South have received similar letters. This is what is going on throughout the length and breadth of the South—and only in the South.

When I was studying law at the University of Georgia, I thought that laws applied equally throughout the land. Congress acted on this matter in 1964 and held that there would not be any busing in order to achieve racial balance. But the Department of Health, Education, and Welfare, as well as the Federal courts, have completely ignored this mandate of Congress.

I hope that the Senate will be able to put a stop to it.

Mr. STENNIS. Mr. President, I yield 15 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 15 minutes.

Mr. ALLEN. Mr. President, I thank the distinguished Senator from Mississippi.

Mr. President, the amendment offered by the distinguished Senator from Maryland would seem to presuppose the fact that segregation and the methods to be used to achieve desegregation in our public schools is a problem in the South alone.

I believe that debate in recent days has demonstrated without question that segregation is a national problem.

The pending amendment would seek to preserve the status quo. It would seek to preserve the Federal school policy which permits segregation to continue to exist in the North but which demands desegregation now in the public schools of the South.

What the amendment does is to add six words and to say that "except as required by the Constitution" the enumerated actions cannot be done by HEW.

What are the matters that HEW is forbidden to do under the terms of the Whitten amendment? They cannot use any of the funds appropriated in the act for the purpose of requiring a school district to take any action with reference to busing students. They cannot use any of the funds appropriated by the act to require a school district to close schools. And they cannot use any of the funds appropriated by the act to require a child to go to a school other than a school chosen by that child's parents.

The effect of the pending amendment would say that those prohibitions provided by the Whitten amendment shall be applicable in the North, that the segregation that exists in the North will be protected by the provisions of the Whitten amendment, as amended by the Mathias amendment, or to relate it properly, the Scott amendment.

Under the existing policies of the HEW, they use the term "to overcome racial imbalance" as a protection for the segregation that exists in the North. And they interpret a similar provisions of the existing law to say that these methods cannot be used by HEW to seek to overcome the racial imbalance in the North, because they hold—the Department of Health, Education, and Welfare—that the phrase "to overcome racial imbalance" applies to de facto segregation only.

So, all that the Department of Health, Education, and Welfare is going to need is this phrase, consisting of six words, added to the bill to allow the present unfair and inequitable policies of HEW to continue. It would say, "except as required by the Constitution."

If the Constitution requires something, no action that the Senate can take can do away with that requirement. And if the Constitution prohibits something, no action by the Senate can legally pass a measure requiring that act to be done.

So, the phrase is absolutely without valid application. But it will be used by the Department of Health, Education, and Welfare to protect the segregation of the North and to continue to use these very same methods that the act would forbid, to provide instant desegregation in the South.

I was very much interested in the logic of the distinguished senior Senator from Pennsylvania when he said that, if the Senate passes the Whitten amendment, and this would be in effect the rejection of the Mathias amendment, that if the Senate passes the Whitten amendment, that would be inconsistent with the action which the Senate took in passing the Stennis amendment.

I was very much interested in that logic. I would hope that if the Mathias amendment is agreed to, we would see and hear the distinguished senior Senator from Pennsylvania take the same position, that the Senate took action consistent with the provisions of the Stennis amendment. The Stennis amendment called for uniform application of desegregation policies. And a casual reading of section 408, which is sought to be amended by the Mathias amendment, would show that its provisions supply throughout the country.

So, it would seem to the junior Senator from Alabama that the adoption of the Whitten amendment and the rejection of the Mathias amendment would be action that would be consistent with the Stennis amendment. But the distinguished senior Senator from Pennsylvania takes the opposite position.

All that the people of Alabama want

is equal protection of the law. And we feel that, by the adoption of the Whitten amendment—section 408 without amendment—that the same rule will be applied throughout the country and that it will be consistent with the provisions of the Stennis amendment.

So, in effect, the amendment offered by the Senator from Maryland would say that HEW cannot take these actions with these funds, except in the South, that they are forbidden from taking them, except in the South, and that they cannot take these actions to overcome racial imbalance or de facto segregation.

So, the purpose of the Mathias amendment is to preserve segregation in the North and to require instant desegregation in the South.

I was very much interested, as we in the South give our good faith efforts to desegregate our public schools, in a pamphlet put out by the Regents of the University of the State of New York under date of December 1969 entitled, "Integration and the Schools." And in that survey or in that study, this statement is made:

> Racial and social class isolation in the public schools has increased substantially during the past two years despite efforts to eliminate it.

So, we are going to continue, if the pending amendment is agreed to, to protect this segregation in the North that is continuing to increase, according to studies made by the Regents of the University of the State of New York.

I am interested, too, in why we have not heard from the black leadership of this country with regard to the position of those who espouse an amendment such as the Mathias amendment, which would continue segregation in the North. I wonder if they feel that segregation should be eliminated only in the South, or if they feel that a fence should be built around sections outside the South and that segregation should continue to be preserved there, as it will be if the Mathias amendment is agreed to.

I hope, Mr. President, that we will reject the Mathias amendment, because that action would be consistent with the provisions of the Stennis amendment which the Members of the Senate in a great show of statesmanship and fairness passed only last week and that they will give the people of this country, South as well as North, equal protection of our law. And that is all we are asking. And we think that is not too much to ask. I hope the Senate will defeat the Mathias amendment.

Mr. President, I yield the floor.

Mr. PRESIDENT. I thank the Senator from Alabama very much.

The PRESIDING OFFICER. Who yields time?

Mr. GRIFFIN. Mr. President, I yield 30 minutes to the distinguished Senator from Mississippi.

The PRESIDING OFFICER. Is that 30 minutes on the bill?

Mr. GRIFFIN. That is correct.

The PRESIDING OFFICER. The Senator from Mississippi may proceed.

Mr. STENNIS. Mr. President, I yield 10 minutes to the Senator from South Carolina.

Mr. THURMOND. Mr. President, we are again debating a subject which should be familiar to all of us by now. The House of Representatives has again attached the Whitten amendment to the appropriations bill for the Department of Health, Education, and Welfare. The House has also passed section 410, providing that HEW cannot withhold funds from school districts which use freedom of choice. The Whitten amendment, which added sections 408 and 409 to the bill, was added in the House Appropriations Committee by a vote of 30 to 11. An amendment, similar to those being offered here in the Senate, which would have nullified the effect of the Whitten amendment was rejected by the House by a vote of 145 to 122.

The Senate Appropriations Committee rejected a move to delete the Whitten amendment by a vote of 11 to 9. The issue is now before the Senate again for our deliberation and decision.

Mr. President, the amendment which is being offered to sections 408 and 409 has a sincere ring to it. "Except as provided in the Constitution" is nothing more than a stratagem to emasculate the amendment, but it sounds so pious that it ranks with the flag and motherhood among those things which it is said no politician can afford to oppose. But I believe we should contemplate the effect of adding these words. The first thing we must consider is that every piece of legislation passed by the Congress must meet the test of constitutionality. No such words are needed to insure that we act within the bounds of the Constitution.

Second, do we wish to add a 10th member to the Supreme Court? It would seem highly irregular to have the Secretary of Health, Education, and Welfare or, more likely, scores of lower-level bureaucrats serving as interpreters of the Constitution. The Federal bureaucratic establishment is obligated to carry out the will of Congress. To relieve them of this obligation by empowering them to override congressional intent through their own ideas of what the Constitution provides would be an extreme case of the Congress abdicating its role under the Constitution.

Mr. President, when we realize that the word "education" does not even appear in the Constitution, it should impress us even more with the folly of turning over to the Department of Health, Education, and Welfare the task of determining whether the Constitution allows the Department to carry out congressional mandates.

Third, we must consider whether we would be giving to HEW a responsibility which more properly belongs to the Judiciary and the Department of Justice. The duty of the Department of Health, Education, and Welfare regarding Federal aid to education is to determine if a given school district meets the congressional requirements necessary to receive the aid. It is the function of the courts to determine if a school district, or any other governmental subdivision, is operating within constitutional bounds. Further, it is the function of the Department of Justice to enforce the determinations of the Judiciary. The Departments of Agriculture, Interior, Transportation, Housing and Urban Development—and so on down the line, are not empowered nor structured to make determinations of whether or not recipients of their programs are meeting all requirements of the Constitution. The Department of Health, Education, and Welfare is certainly no exception.

Mr. President, besides the consideration already suggested concerning the proper role of the Department of Health, Education, and Welfare in our governmental structure, let us consider what is the central question before us. In my judgment, it is this: The right of the parent to choose the school his child will attend. Are we going to allow the State to make decisions which the individual should make?

Freedom of choice is the issue. It is right for the South, it is right for the entire Nation. It is the only policy consistent with a free society. It is the best policy for promoting sound education.

Mr. President, freedom of choice is not a southern subterfuge. It is a position with which both New Yorkers and South Carolinians can agree. The Members of this body are familiar with the New York law. New York is regarded as the citadel of liberalism in this Nation, but New York has a freedom of choice law. The State Legislature of Oklahoma passed a concurrent resolution on February 4 which petitioned the Congress to amend the Constitution as follows:

> No person shall, by reason of race, color, creed or national origin, be refused admission to or be excluded from any public school nor be compelled to attend a desegregated public school.

Similarly, Mr. President, the legislature of my own State of South Carolina passed a concurrent resolution of February 18 memorializing Congress to call a constitutional convention for the purpose of returning the control of education to the States. The resolution specifically cited the abrogation of freedom of choice as the reason for the petition. I should like to read this resolution to the Members of this body:

S. 591

A concurrent resolution memorializing Congress to call a constitutional convention for the purpose of returning the control of public education to the States.

Whereas, the heretofore gradual erosion of state control and direction of the public educational system and institutions has now accelerated into a wholesale usurpation of power by a federal obligarchy; and

Whereas, under the aegis of the federal courts banning prayers and abrogating freedom of choice, federal administrative agencies have been obsessed with creating an omniscient and ubiquitous Federal Board of Education capable of deciding in the smallest and most remote school districts of our land problems peculiar to that district; and

Whereas, these Federal innovators have placed in grave jeopardy the public educational system of every school district in every state in the nation, and have wrought havoc, confusion and frustration; demoralized school officials and made a travesty of the education of our children. Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

That the Congress call a constitutional convention for the purpose of returning the control of education to the states.

Be it further resolved that copies of this resolution be forwarded to Senator James P. Mozingo, each United States Senator from South Carolina and each member of the House of Representatives of Congress from South Carolina.

Mr. President, justice is the goal and freedom of choice is the path to that goal. The people have spoken—in New York, in Oklahoma, and in South Carolina. The House of Representatives—all of whom must face the people for reelection this November—have supported freedom of choice. Let us not allow the Senate to rob the people of their victory. Freedom of choice is the people's choice. Let us vote accordingly.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. I yield 20 minutes to the Senator from Virginia.

Mr. BYRD of Virginia. Mr. President, first, I want to say I do not approve of time limitations being placed on such vitally important pieces of legislation as the pending measure.

I feel a great deal of good has been accomplished during the past 3 weeks, during which these matters vitally affecting the people of our Nation have been debated in the Senate. I think the more information that the public can obtain as to just what the Department of Health, Education, and Welfare is attempting to do, the better is the entire country.

Mr. President, I shall discuss sections 408, 409, and 410 because they generally pertain to the same matter; that is, the legislative direction that Federal funds shall not be withheld for the purpose of forcing busing, to achieve racial composition, and also that the individual parents—black and white—may make the decision as to where they desire to send their children to school. I favor these amendments.

Mr. President, I ask unanimous consent that sections 408, 409, and 410 be inserted in the RECORD.

There being no objection, the sections were ordered to be printed in the RECORD, as follows:

SEC. 408. No part of the funds contained in this Act may be used to force any school district to take any actions involving the busing of students, the abolishment of any school or the assignment of any student attending any elementary or secondary school to a particular school against the choice of his or her parents or parent.

SEC. 409. No part of the funds contained in this Act shall be used to force any school district to take any actions involving the busing of students, the abolishment of any school or the assignment of students to a particular school as a condition precedent to obtaining Federal funds otherwise available to any State, school district or school.

SEC. 410. No part of the funds contained in this Act shall be used to provide, formulate, carry out, or implement, any plan which would deny to any student, because of his or her race or color, the right or privilege of attending any public school of his or her choice as selected by his or her parent or guardian.

Mr. BYRD of Virginia. Mr. President, I have followed this debate for the last 3 weeks with a great deal of interest. I followed it with a great deal of interest today. If the matter were not so serious, it would be, I think, rather amusing to listen to the arguments made here on the floor of the Senate.

I must admit I am somewhat naive. I had assumed that the majority of the Senate felt that there should be racial balance in the schools whether those schools be in the South or whether those schools be in another part of the Nation.

But anyone who has been on the floor of the Senate today, anyone who has been on the floor of the Senate during the last 3 weeks, knows that that is not the case. Time and again we have heard is said that these busing laws should apply only to those areas where there is "official" segregation, which the Senator from New York and the Senator from Minnesota say is the southern part of our country.

Yet the fact is that there is no official segregation anywhere in our Nation. There has been no official segregation anywhere in our Nation since May 17, 1954, nearly 16 years ago.

It has been rather amusing to me, Mr. President, to hear those who have been so vehement in their denunciations of the South say, when it comes to applying the same standard to other areas of the Nation, "Oh, but we have a different situation." The senior Senator from New York said substantially that a number of times—We have a different situation in New York.

Well, perhaps so. He says they have a residential pattern of segregation which presents a great problem to them so they cannot tackle that problem, and the problem must be tackled only in the South.

Well, I guess that is one way of looking at it, but I feel that the people of this Nation have a great deal of intelligence. I believe strongly in the intelligence of the people of this Nation. I think they can see through this stuff—this sham.

The Senator from Connecticut (Mr. RIBICOFF) cut through the veneer 2 weeks ago. He pointed out that within a few blocks of where the Senator from New York lives there are a dozen schools which are 99 percent Negro. But no one intimately involved in that area of the Nation proposes to do anything about that.

The Senator from New York said on the floor today that it is a State problem, to be determined by the States. But if someone from the South says these matters are State problems he is bitterly assailed as a States-righter.

I want to say, in regard to the Senator from Connecticut (Mr. RIBICOFF), that my admiration for him does not stem from the speech he made 2 weeks ago. If one looks at the files of the Virginia newspapers, he will find that 9 years ago, in 1961, when I was appraising for the people of Virginia the Cabinet members appointed by the late President John F. Kennedy, I put ABRAHAM RIBICOFF at the top of all the men appointed to the Cabinet as being a man of unusual ability and integrity. So his speech of 2 weeks ago did not influence the high regard I long have had for Senator RIBICOFF.

Mr. ERVIN. Mr. President, will the Senator yield for a question?

Mr. BYRD of Virginia. Mr. President, I yield to the Senator from North Carolina.

Mr. ERVIN. Mr. President, I just want to ask the Senator from Virginia this question with respect to the speech made by the distinguished Senator from Connecticut (Mr. RIBICOFF). Does not the Senator from Virginia agree with the Senator from North Carolina that the Senator from Connecticut on that occasion violated the advice of Mark Twain that the truth is so precious that it should be used sparingly?

Mr. BYRD of Virginia. I like the expression of the Senator from North Carolina.

Mr. ERVIN. He told the truth, did he not?

Mr. BYRD of Virginia. He certainly told the truth.

I want to discuss for a moment the Department of Health, Education, and Welfare, because I fear that that Department is becoming more interested in social experiments than it is in education.

I am inclined to think that Secretary Finch may be out of touch with reality. I understand, judging from the newspapers, at least, that he has considerable interest in one or two political positions in California or elsewhere, but I will say this: If he were elected to either one of those positions and did not handle his mail any better than he does here, he would not be reelected.

When I communicate with the President of the United States, I get a prompt reply.

When I communicate with the Secretary of Defense, I get a prompt reply.

When I communicate with the Secretary of the Treasury, I get a prompt reply.

When I communicate with the Secretary of Agriculture, I get a prompt reply. But when I communicate with Secretary Finch, I do not get any reply.

The only way I get a reply from Secretary Finch is when his Under Secretary, Mr. Veneman, comes before the Finance Committee and I interrogate him on some matters that I have directed to Mr. Finch.

I had hoped that Mr. Finch might appear before the Committee on Finance this week when we were taking up the vitally important matters of medicare and medicaid.

Mr. Finch has not been before the Committee on Finance for more than a year, and that was the time when he came before the committee to appeal for the confirmation of his nomination. So I think he is probably out of touch with many of his constituents.

I admit that U.S. Senators are not very important. I do not claim that we are important. But I do claim that we are American citizens; and I think any American citizen who represents 4,700,000 persons should have the right to get a response to an important question from the Secretary of Health, Education, and Welfare. He is not a royal potentate.

The city of Newport News, Va., has had some difficulties in regard to the problem of HEW attempting to use Federal funds—the withholding of such funds—to force busing. I put several questions to

Under Secretary Veneman, of whom, as I say, I think very highly. I shall read several questions and answers into the RECORD:

Senator BYRD. Now, Mr. Veneman, the Secretary has repeatedly been quoted as stating that your department, HEW, does not force localities to bus school children to achieve racial balance. Is that correct?

Mr. VENEMAN. That is correct.

Senator BYRD. But is it not a fact that your department has refused to approve desegregation plans of individual school districts while at the same time indicating that plans involving busing would be acceptable?

Mr. VENEMAN. As a means of achieving desegregation.

Senator BYRD. Would you in your capacity have an appropriate official in the department communicate with the city of Newport News and tell them that you have no right to require them to bus students?

Mr. VENEMAN. We do not have a right to require them.

Senator BYRD. Let me ask you this: What is the difference, legally or morally, between ordering busing to achieve racial balance and issuing rulings which, in effect, leave the commuunity with no choice but to bus to achieve racial balance or lose federal funds? What is the difference?

Mr. VENEMAN. The Department—I really would like to make this clear. The Department has not required the transportation of students to achieve racial balance. And I do not think there is a court decision on that as yet.

Senator BYRD. Well, would you indicate what is difference, legally or morally, between ordering busing to achieve racial balance, which you say you do not do, and issuing rulings which, in effect, leave the community with no choice but to bus or lose federal funds?

Mr. VENEMAN. I do not think we have issued that ruling that leaves a community with no choice, Senator.

I suggest that the subordinates of Mr. Veneman in HEW read the record of the hearings before the Finance Committee last Thursday, and read Mr. Veneman's statement in regard to busing, because officials of that department have come into Virginia and have browbeaten the local officials into thinking that HEW has the right to force them to bus all the way across cities and counties for the purpose of achieving racial composition, when the law says they cannot do it, and when the Under Secretary of Health, Education, and Welfare, has said, before a Senate committee in a formal hearing, that they do not have the legal right to do that.

Mr. President, I support sections 408, 409, and 410. I oppose the amendment offered by the Senator from Maryland, as I think it is merely a red herring drawn across the trail.

I ask unanimous consent to have printed in the RECORD an editorial from radio station WBTM at Danville, Va., captioned "Freedom of Choice" and written by Leon Smith, of WBTM News, the last paragraph of which reads as follows:

Before the courts and the Congress combine to bankrupt the nation in the name of social justice, perhaps the judicial and the legislative should take another look at freedom of choice, which, after all, is the opposite of coercion by imposition.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

FREEDOM OF CHOICE

Some years back in the deep South, white supremacy advocates added to the burgeoning problems of northern welfare organizations by offering free, expense paid transportation to Negro families who wished to resettle and seek their fortunes north of the Mason-Dixon Line. Tickets purchased at bus depots and train stations were one-way. The motive was purely racial, but in retrospect, it was the germination of the idea of the busing of people to achieve integration across the land.

Today, in the North and the South, parents who have gotten together in localities to fight the inequities of the busing of their children outside their neighborhoods can proclaim 'til doomsday that race has nothing to do with it: neither the courts nor the Congress will accept their objections at face value.

We hold that motive here is not the primary consideration. What's at stake is the ultimate destruction of the public school system, and eventual economic chaos in local governments everywhere as city treasuries are emptied in trying to satisfy desegregation guidelines forced on them by the courts. The public schools are the threshhold of a bigger plan to integrate the American society. One wonders whether anybody, white or black, is willing to pay the price of precipitous mixing of the races. The cost cannot be measured solely in financial columns.

The cost of immediate school desegregation realistically must be counted for in the disruption of neighborhoods; the deterioration of education systems; the rise of private schools not always academically sound; certain violence in the schools, and danger to the life and limb of young students.

Next year in Danville, Virginia, if the Department of Health, Education and Welfare prevails, parents of the more affluent children will have to deliver their tots to the assigned elementary schools far from home. Those who can't afford private transportation will have to put their youngsters on the busy streets each morning for the long and hazardous trek. The very young will be walking in the streets where there are no sidewalks, and crossing countless busy thoroughfares, all in the name of sitting in a classroom in the company of racially opposite classmates.

It's either that or busing, an expense no city government yet has found it possible to pay for on anything approaching an effective scale for an entire school system.

Before the courts and the Congress combine to bankrupt the nation in the name of social justice, perhaps the judicial and the legislative should take another look at freedom of choice, which, after all, is the opposite of coercion by imposition.

Mr. BYRD of Virginia. Mr. President, I yield back to the Senator from Mississippi such time as I have remaining.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I yield the Senator from New Hampshire 5 minutes.

Mr. COTTON. Mr. President, I do not think I need but 2 minutes. Because I know this debate is about to close, I simply, as a member of the subcommittee which has worked long weeks and months on this HEW bill, and gone through the difficulties, want to say that even though I am perfectly satisfied with and did, in the past, vote for these sections as they appear in the bill, I am not a constitutional lawyer of great depth; but it seems to me that these words "except as required by the Constitution" can be argued both ways. The proponents of the amendment can say, "It does no harm for Congress to say they want the Constitution followed," and the opponents can say, "The Constitution has got to be followed, so the words have little significance."

Mr. President, I have a little personal interest here, I confess. Here we are, within 4 months of the end of the fiscal year. I am quite confident, or I might say quite convinced, that if we can send this bill to the House of Representatives without further amendment, we can get rather speedy approval of it, and I am equally convinced that the President would sign it, and we could go to work on the bill for 1971.

Therefore, though as a practical matter rather than a matter of principle, I also would like to maintain the bill as it is. Unless there is some far-reaching difference, something more than a bow to the Constitution involved, I earnestly hope that we can send this bill to conference without any further modifications.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I yield the Senator from Texas 3 minutes.

Mr. TOWER. Mr. President, I am somewhat concerned that we here in the Senate are still having to deal with the issue of the forced busing of our schoolchildren. However, the Department of Health, Education and Welfare has consistently found ways around the language that everyone here in the Senate thought was perfectly clear. In fact, in a letter from the Department commenting on our action last year on these very same amendments, which we thought were changing the law, it was stated:

By inserting the words "in order to overcome racial imbalance" at two points in the House-passed provisions, the Senate has preserved existing procedure with respect to HEW's school desegregation plan.

This means that we ratified the forced busing of students in the South, but have outlawed it in the North. This is fundamentally unfair. This is the very same idea of fairness that we debated so well and so long here just in recent weeks. That was that the South should no longer be treated any differently than any other section of the Nation. If busing is detrimental to the schoolchildren of the North, it is just as detrimental to the schoolchildren of the South. As the Senator from Connecticut so aptly put it, it is time that the revenge of the previous century be put behind us and the Nation work together again.

The Department of Health, Education, and Welfare has stated flatly and simply that busing in order to overcome racial imbalance means that busing is outlawed for 33 States but can be made, and almost uniformly is, mandatory in the remaining 17. This double standard imposed upon the Nation must be eliminated. We here in the Senate are on record that it is our policy to eliminate this dual system of administering our Nation's laws. This is our chance to do just that.

Mr. President, I am aware that there are some well-meaning people who oppose the position that our Nation's laws be administered uniformly, who believe that harsh methods must be used upon

the "peculiar" part of the Nation. I am aware that they see, in the effort for fair treatment, a dark, sinister plot that will somehow return us to the days of segregation. Nothing could be further from the truth. There is no one in this body or in any other responsible body arguing for a return to segregation. If there were, I would be the first to oppose it. What the proponents of the amendments seek is a workable plan of integration—one that does not destroy the very thing that it is trying to integrate. The main thrust of our Nation's school systems is education. In this education, there must be equality of opportunity. We all stand for that, but at the same time, there must not be a complete disruption of the community.

The PRESIDING OFFICER. The Senator's time has expired. All time of the Senator from Mississippi has also expired.

Mr. MAGNUSON. Mr. President, I yield the Senator from Mississippi 10 minutes on the bill.

The PRESIDING OFFICER. Does the Senator yield that time on the bill?

Mr. MAGNUSON. On the bill.

Mr. STENNIS. I yield 2 minutes of that to the Senator from Texas.

Mr. TOWER. We should not make commuters out of our young school children. Under many HEW plans, children are bused many miles from their homes into strange surroundings where they spend their day. After school, they are bused many miles home where they do not know any neighbors their own age, for their schoolmates live many miles across town. They are concerned. They are bewildered. It is we who must bear the blame for this concern and bewilderment if we do not make it abundantly clear now that we are against forced busing of any form. We must not allow any uncertainty, any way to read the law that would allow the operation of a dual system in the application of the law. We must keep these amendments in the bill for the good of our school children and for the good of education in the United States.

Mr. President, I might say that HEW forced a busing plan on my own community that was not popular, either in the white community, the black community, or the Mexican-American community. It was forced on them because somebody had the notion that the thing which all Texas needed was racial balance in the schools. Nobody wanted it.

If that is democracy, then I do not know what democracy is; and I was under the impression that we were living in a democracy in this country.

I can under no circumstances be branded as a racist or a segregationist. I taught for six schools in integrated classrooms. I made myself unpopular in some quarters of my State by advocating and defending the Brown decision, and I have never been considered anything but a moderate in my State on this matter.

I should like to submit to the Senate that we cannot continue to allow HEW to dictate what it thinks to be socially right to people when they do not want it, do not need it, and when it is disruptive of the educational system and thwarts the democratic process in the United States.

Mr. MATHIAS. Mr. President, I yield 2 minutes to the Senator from Michigan.

Mr. GRIFFIN. I shall not detain the Senate very long.

Mr. President, my position on this amendment is the same as it was when it was offered earlier. I support the amendment, and I hope that it will be adopted.

The amendment calls for the addition of the words "except as required by the Constitution." I find great difficulty understanding how we could do anything other than adopt an amendment which says that the Constitution of the United States is the supreme law of the land.

There has been a good deal of discussion here to the effect that HEW is doing something that it is not supposed to do. I would not defend it in every instance, and perhaps that is the case, but I think that for the most part they have been trying to follow the law.

Also, a good deal of discussion has been focused on the fact that the law is not enforced in the North as it is in the South. I should like to read an excerpt from a decision by the Seventh Circuit Court of Appeals involving Cook County, Ill. I do not do this because I approve of the decision, but only to point out what the law is and what needs to be followed. The decision reads, in part, as follows:

> Defendants . . . contend that they have no constitutional duty to bus pupils, in the District, to achieve a racial balance. It is true that 42 U.S.C. § 2000 withholds power from officials and courts of the United States to order transportation of pupils from one school to another for the purpose of achieving racial balance. However, this question is not before us. . . . [T]he district court's judgment is directed at the unlawful segregation of Negro pupils from their white counterparts which is a direct result of the Board's discriminatory action. Therefore, the district court's order is directed at eliminating the school segregation that it found to be unconstitutional, by means of a plan which to some extent will distribute pupils throughout the District, presumably by bus. This is not done to achieve racial balance, although that may be a result, but to counteract the legacy left by the Board's history of discrimination.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MATHIAS. I yield 1 additional minute to the Senator.

Mr. GRIFFIN. The Seventh District Court of Appeals, speaking to a case involving Cook County, Ill., continued as follows:

> The Constitution forbids the enforcement by the . . . School District of segregation of Negroes from whites merely because they are Negroes. The congressional withholding of the power [to correct racial imbalance] cannot be interpreted to frustrate the constitutional prohibition. The order here does not direct that a mere imbalance of Negro and white pupils be corrected. It is based on findings of unconstitutional, purposeful segregation of Negroes, and it directs defendants to adopt a plan to eliminate segregation and refrain from the unlawful conduct that produced it.

Mr. President, that is the reason why it is appropriate to insert the words in this amendment "except as required by the Constitution."

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. I yield myself 7 minutes, and that will be all the time I propose to use, just in a very brief summary.

Mr. President, however well-sounding the words in the Mathias amendment may appear, as a practical matter, when applied to this problem in these cases, it just means this: that they are going on the same way and, will read out of the Civil Rights Act of 1964 the prohibition with reference to busing, under what I think is a pure subterfuge, claiming it is for some purpose other than effecting racial imbalance, when that is the primary purpose.

The Supreme Court has not passed on the constitutionality of any kind of segregation, except the kind that we now call de jure, and HEW will continue—with some glee because it has happened before—in their old way of applying this law.

Therefore, with respect to *its* meaning, if we really want to get something that will affect this matter—and this is just a limitation that will not last for more than 4 months—we will have to sustain the amendment put in the bill by the House and reject the pending amendment.

I want to point out to my colleagues that this is no longer a question of integration. We are integrated throughout the Nation to a degree, and I think that will increase. It is a question now of saving the quality of education for all people. The black people are finding out that integration by force is not the answer, that it tends to destroy the schools.

Mr. President, I do not hold any office in the Senate that gives me any national recognition or significance. I have here, however, letters from all over the United States, not including my State, that came pouring in because of the debate last week. Some of them are in pencil, some are from businessmen. They come from all over this country. I do not know how many hundreds and hundreds of letters there are. I have just read a few samples. Most of them are favorable to the position the Senate took last week on that amendment, but virtually *all of* them write not about integration but about preserving our public schools and the quality of education for all the children. The sentiment is changing. Realization is coming to the thoughts and minds of people everywhere. I think it shows at the grassroots.

The news magazines, in their columns, all agree now that there has been a change and that new consideration is to be given to the matter. Many of those columnists who are not favorable to what we call the position of the South admit that there is a change in direction and that something must be done to save the public schools and the quality of education. I believe that every single Member of this body realizes that something must be done; that to continue on these "flat tires" as we are now, will not solve the problem but will create graver problems in the quality of education.

Mr. President, I believe it is this matter of the busing of children which has awakened the people.

I have already told the Senate about the Michigan-born man from Florida, who was coming in from California. He told me about his 12-year-old son who was so bewildered, disappointed, and frustrated when he found out that he was going to be bused to the other side of town to go to school. He went to his father and said with the great expression of faith that all children have in the fathers, "Papa, I know you will do something about it for me. You will not let this happen to me."

When this same situation becomes apparent in other parts of the country, they will find out what this application means. Communities in the North with segregated schools, now sitting by with immunity, will come to know what it is all about. That is what this fight is over, to keep them immune.

I do not believe that anyone is gleeful about what is happening and bringing near disaster to our schools. This busing, this tearing up of the schools and putting education last and integration first, will not save this thing from coming to them.

Integration will take care of itself the only way it can be taken care of, by the natural process of time. Whatever degree it will be, it will be because the people want it that way. On a subject like this, it will be largely what they want. The Supreme Court of the United States cannot declare the feelings of both races to be unconstitutional. They cannot bring in any HEW conclusions into it. This thing must evolve. It cannot be mandated.

My plea is, let us lift up our eyes toward education. Let us stop this thing and take another look. I do not think it will affect a single court decree. This thing has gotten out of balance and become extreme, not because of anything the districts have done or failed to do, but because of the overzealous application of the 1954 decision and the additions which have been made to it in trying to bring about total enforcement.

Our plea is for quality education throughout the Nation. The entire Nation will have to stop and take a new look and make a new start.

The life of this amendment will be very short, about 4 months, but it will be a start, the best step, I think, that we can take at this time. Then we can reevalue the matter.

Mr. President, I yield back whatever time I have remaining and I want to thank the distinguished Senator very much for yielding me this time.

Mr. MATHIAS. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER (Mr. EAGLETON in the chair). The Senator from Maryland is recognized for 5 minutes.

Mr. MATHIAS. Mr. President, let me discuss briefly why I think section 408 as it appears in the bill needs to be amended, and why I think it is necessary to add the words I have proposed to be amended as an amendment.

I am not going to spend any time on the moral issues involved. I think they have been eloquently and fully debated. On that subject I would only say that, this being an appropriation bill, the section as written would work 4 months of mischief, 4 months of mischief in the hope of stopping the clock.

My observation of the pattern of history is that we cannot stop the clock. We can hold the pendulum—we can hold it with this section for 4 months, but the pendulum of history ultimately will begin to swing again, and having been held in an unnatural position, when let go, will swing with a mighty and irresistible surge.

I think it would be a great mistake to allow sections 408 and 409 to stand for the purpose of trying to stop the clock; but, more than that, I oppose them as they now are written because I think they are in direct conflict with section 804 of the act of 1965, United States Code 884, which prohibits Federal control of education.

I read.

> Nothing contained in this act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program, instruction, administration, personnel, of any educational institution of a school system . . . and so forth.

What section 408 does is, of course, to say to the States of this Union, "No matter why you do it, no matter who wants it in your State, you cannot do these things and have 1 penny of Federal money."

We are beginning, by the so-called Whitten amendment, to put a very real price on Federal money. I oppose on that ground alone, in addition to the grounds I have already stated, the imposition of this kind of prohibition of the States and on their exercise of freedom in shaping their educational institutions.

But how will the addition of the words, "except as required by the Constitution," alter that situation?

Well, section 408 specifies an inventory of remedial steps which can be taken, under hard circumstances, to achieve the constitutional goal enunciated in the Brown case.

The PRESIDING OFFICER. The time of the Senator from Maryland has expired.

Mr. MATHIAS. Mr. President, I yield myself 3 additional minutes.

I would hope, very frankly, Mr. President, that it were not necessary in any part of the country ever to take any of the actions which are prohibited or would be prohibited by section 408. I would hope that we would not have to go to those steps. But if wishes were horses, beggars would ride; and the fact is that in the hardest kind of cases some one of those tools may be necessary. If we prohibit by this act—and that is the only route, the only way to get to the consitutional goal or constitutional requirement—then we put the Secretary of Health, Education, and Welfare, or the President of the United States between the bark and the tree, because we have prohibited them from doing the only things which can enable them to discharge their sworn duty under the Constitution. I do not think we should prohibit them by affirmative language from taking the steps which are perhaps the only way in which they can discharge their duty.

I do not think we should eliminate these possible tools, because if they are not available, as the Secretary of Health, Education, and Welfare himself said in his letter addressed to Members of the Senate Committee on Appropriations in December—if these measures are not available, will make it less possible for the Secretary to persuade the various systems with which he must deal to use the simpler, easier, and more acceptable methods.

The President wants this amendment; Welfare has requested it. I submit it is a necessary amendment if we are to carry out the principles of the Constitution.

Mr. KENNEDY. Mr. President, the question posed by sections 408, 409, and 410 is whether the Congress chooses to ignore the mandate of the Supreme Court and nullify the constitutional rights of minority schoolchildren.

The effect of these provisions would be to severely undercut the purpose of title VI of the Civil Rights Act, which is intended to prohibit racial discrimination in programs and activities, including school districts, which receive Federal financial assistance.

Fifteen years after the Supreme Court's decision in the Brown case, it is now proposed under these sections that school districts not now in compliance with the law be permitted to revert to a form of pupil assignment—so-called freedom of choice—which has proven in most cases to be unconstitutional.

The amendments as passed by the House also prohibits the Department of Health, Education, and Welfare from "requiring" the busing of students, or "requiring" the closing of schools. It will be necessary to return to these matters later on. Controversial and often misunderstood, it is clear that these issues are broached merely to give the provisions a broader political appeal to the unsuspecting.

Under title VI, the Department of Health, Education, and Welfare is authorized to negotiate with school districts in order to achieve effective school desegregation. The Office of Education has provided, and is continuing to provide, extensive assistance to school districts in drafting and implementing plans that are educationally sound and that accomplish desegregation with a minimum of disruption. Only as a last resort has the Department felt obliged to bring a school system into administrative enforcement proceedings, which may ultimately lead to the termination of Federal funds.

HEW's guidelines with respect to the acceptability of freedom of choice desegregation plans under title VI reflect court decisions and actual experience with such plans.

In the latter case, it has become patently clear that in the vast majority of school districts, freedom of choice plans have not done the job; on the contrary, they have served to perpetuate illegal segregation.

In most school districts such factors as the traditionally subservient economic

and social status of the black community, intimidation and harassment by whites, and the sharp educational gap between white and black students, have all acted to bar mobility within the system.

In the main, therefore, the racial identifiability of the schools within the system was kept undisturbed. Freedom of choice was in fact no choice at all; it was rather a euphumism for continued massive resistance to the requirements of the law.

The weakness of freedom of choice in terms of the law is that it places the burden of desegregation on the Negro parent and the Negro child, despite the fact that the constitutional responsibility for assuring equal education rests with the school authorities.

Freedom of choice reinforces the fundamental characteristic of the dual school system, which is the fact that communities operate and maintain Negro schools and white schools—as opposed to just schools.

For the reason that freedom of choice did not in most situations meet the test of effectiveness, in terms of actual desegregation in the schools, this method of eliminating the dual school system was recognized as inadequate—and the Federal courts have upheld the proposition.

Thus, in United States against F Jefferson County Board of Education, the Fifth Circuit Court of Appeals, sitting en banc, ruled on March 27, 1967, that:

> Boards and officials administering public schools in this circuit have the affirmative duty under the Fourteenth Amendment to bring about an integrated, unitary school system in which there are no Negro schools and no white schools—just schools. . . . In fulfilling this duty it is not enough for school authorities to offer Negro children the opportunity to attend formerly all-white schools.

The court went on to say:

> Freedom of choice is not a goal in itself. It is a means to an end. A sechoolchild has no inalienable right to choose his school.

On May 27, 1968, in the case of Green against New Kent County, Va., the Supreme Court ruled unanimously that:

> In desegregating a dual system, a plan utilizing freedom of choice is not an end in itself. . . . The burden on a school board today is to come forward with a plan that promises realistically to work, and promises to work realistically *now*. . . . It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation.

The Court on this occasion quoted from the opinion of Judge Sobeloff in the case of Bowman against County School Board, as follows:

> Freedom of choice is not a sacred talisman; it is only a means to a constitutionally required end—the abolition of the system of segregation and its effects. If the means prove effective, it is acceptable, but if it fails to undo segregation, other means must be used to achieve this end.

In negotiating for compliance with title VI, HEW has consistently updated its requirements and procedures so that they conform to the latest court decisions. Hence, the so-called guidelines, issued in March of 1968, reflected the decisions of lower Federal courts on the issue of freedom of choice plans.

Freedom of choice plans were listed among other suggested methods, in the Department's first school desegregation guidelines issued in the spring of 1965. Since the early years HEW, in line with court decisions, has reaffirmed the validity of such plans—provided that in each particular school district the plan achieves a unitary, nonracial educational system. A freedom of choice plan, or any other plan of student assignment, is not of ultimate significance; what is essential is whether the plan disestablishes the dual school structure.

Now, the so-called Whitten amendment would contravene the decisions of the courts and the policies of HEW by forcing the Government to accept all freedom of choice plans—regardless of whether such plans are effective in ending discrimination.

The effect of enacting such a provision at this point in history could be disastrous. HEW would be bound by a congressional directive that contradicts the law of the land. School districts which have negotiated and implemented effective desegregation plans in good faith would be encouraged to go back on their word and resort to methods of proven ineffectiveness. On the other hand, school districts which are still in the negotiating stage would move to grasp this last legal straw and refuse to cooperate.

Particularly in light of the Supreme Court's latest order in the case of Alexander against Holmes County Board of Education, the Whitten amendment strikes a devastating blow at law and order—that popular idiom that is otherwise much maligned.

In Alexander, announced on October 29, the Court ordered that it is the obligation of "every school district to terminate dual school systems at once and to operate now and hereafter only unitary schools." The record makes clear that such a mandate cannot be effectuated under freedom of choice plans in the vast majority of school districts.

The important point is that for the purpose of complying with the law, in a manner that is most practical and suitable, HEW and school districts must retain flexibility. The Whitten amendment seeks to remove that flexibility by encouraging school districts to refuse to take reasonable and necessary measures in accordance with the requirements of the courts and of HEW, Federal district courts, for instance, have approved desegregation plans that embrace both busing and the abolishment of inferior schools.

HEW does not require the closing of schools and, in fact, encourages the retention of usable educational facilities. In some cases, it has been urged that schools be closed because their inferiority was such that under no circumstances was it possible to provide for quality education in a unitary system. However, in many cases, school districts have chosen to close usable all-Negro facilities instead of desegregating them, in the belief that white children would not attend them under desegregated conditions.

In conclusion, the architects of this amendment have not sought to disguise its intent, which is to turn back the clock on school desegregation. It is the same amendments proposed by the House last year, which failed to pass the Congress in its original, injurious state. I would hope that every person who is concerned about the course of civil rights in this country would oppose these provisions, which, if enacted, would throw the school desegregation program into chaos and confusion and cripple the enforcement effort.

Mr. MATHIAS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the first Mathias amendment.

Mr. MAGNUSON. Mr. President, because it is Saturday, and many Senators are not quite so available in the building as they would be on any other weekday, I should like to suggest the absence of a quorum to let them have time to come to the Chamber.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MAGNUSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MAGNUSON. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. STENNIS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STENNIS. Mr. President, what is the pending question before the Senate?

The PRESIDING OFFICER. The pending question is on the first part of the Mathias amendment.

Mr. STENNIS. Is that the amendment to section 408 of the bill as passed by the House?

The PRESIDING OFFICER. The Senator is correct.

Mr. STENNIS. And a vote of "aye" would amend that section. A vote of "nay" would allow it to remain as it is.

The PRESIDING OFFICER. The Senator is correct.

All time having expired, the question is on agreeing to the first part of the Mathias amendment. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALLOTT (when his name was called). On this vote I have a pair with the senior Senator from Rhode Island (Mr. PASTORE). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." I withhold my vote.

Mr. NELSON (when his name was called). On this vote I have a pair with the junior Senator from Louisiana (Mr. LONG). If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." I withhold my vote.

The assistant legislative clerk concluded the call of the roll.

Mr. BELLMON (after having voted in the affirmative). On this vote I have a pair with the Senator from South Dakota (Mr. MUNDT). If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." I withdraw my vote.

Mr. BIBLE (after having voted in the negative). On this vote I have a pair with the Senator from Indiana (Mr. BAYH). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. CANNON (after having voted in the negative). On this vote, I have a pair with the Senator from Washington (Mr. JACKSON). If he were present and voting, he would vote "yea"; if I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. FULBRIGHT (after having voted in the negative). On this vote, I have a pair with the Senator from Iowa (Mr. HUGHES). If he were present and voting, he would vote "yea"; if I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. KENNEDY. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from Connecticut (Mr. DODD), the Senator from Iowa (Mr. HUGHES), the Senator from Washington (Mr. JACKSON), the Senator from Louisiana (Mr. LONG), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Rhode Island (Mr. PASTORE), and the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

I further announce that the Senator from Alaska (Mr. GRAVEL) is absent on official business.

I further announce that, if present and voting, the Senator from Alaska (Mr. GRAVEL) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOK), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senators from Illinois (Mr. PERCY and Mr. SMITH), and the Senator from Alaska (Mr. STEVENS), are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Ohio (Mr. SAXBE) is absent on official business.

If present and voting the Senator from Illinois (Mr. PERCY) would vote "yea."

The pair of the Senator from South Dakota (Mr. MUNDT) has been previously announced.

On this vote, the Senator from Kentucky (Mr. COOK) is paired with the Senator from Illinois (Mr. SMITH). If present and voting, the Senator from Kentucky would vote "yea" and the Senator from Illinois would vote "nay."

The result was announced—yeas 42, nays 32, as follows:

[No. 71 Leg.]

YEAS—42

Aiken	Dominick	Hatfield
Anderson	Eagleton	Inouye
Boggs	Fong	Javits
Brooke	Goodell	Kennedy
Burdick	Griffin	Magnuson
Case	Harris	Mansfield
Cooper	Hart	Mathias
Cranston	Hartke	McCarthy
McGee	Pearson	Schweiker
McGovern	Pell	Scott
McIntyre	Prouty	Symington
Metcalf	Proxmire	Tydings
Mondale	Randolph	Williams, N.J.
Muskie	Ribicoff	Young, Ohio

NAYS—32

Allen	Gore	Russell
Baker	Gurney	Smith, Maine
Bennett	Hansen	Sparkman
Byrd, Va.	Holland	Spong
Byrd, W. Va.	Hollings	Stennis
Cotton	Hruska	Talmadge
Curtis	Jordan, N.C.	Thurmond
Dole	Jordan, Idaho	Tower
Eastland	McClellan	Williams, Del.
Ellender	Miller	Young, N. Dak.
Ervin	Murphy	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—6

Allott, against.
Bellmon, for.
Bible, against.
Cannon, against.
Fulbright, against.
Nelson, for.

NOT VOTING—20

Bayh	Hughes	Pastore
Church	Jackson	Percy
Cook	Long	Saxbe
Dodd	Montoya	Smith, Ill.
Fannin	Moss	Stevens
Goldwater	Mundt	Yarborough
Gravel	Packwood	

So, the first Mathias amendment, on page 60, line 16, was agreed to.

Mr. MATHIAS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SCOTT. I move to lay that motion on that table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is now on the second Mathias amendment. Who yields time?

Mr. MAGNUSON. Mr. President, for the information of Senators, as I understand it, the second amendment of the Senator from Maryland is to add the same words to section 409. Is that correct?

Mr. MATHIAS. That is correct.

The PRESIDING OFFICER. Who yields time?

Mr. MATHIAS. Mr. President, I yield myself 2 minutes.

Mr. STENNIS. Mr. President, may we have order, so that we may hear the Senator explain his amendment.

The PRESIDING OFFICER. The Senate will be in order. The Senator from Maryland is recognized for 2 minutes.

Mr. MATHIAS. Mr. President, as the Senator from Washington has already explained, the purpose of the amendment is to add the same words to section 409 as have just been added by the Senate to section 408. The words are "Except as required by the Constitution,".

Mr. President, this, of course, is a section which differs from the preceding section in that it does not refer to the choice of parents, but includes the same inventory of educational tools, and relates them to a condition precedent to obtaining Federal funds otherwise available. With that exception I would say that the arguments that will be made on both sides will be very nearly identical to those made with respect to section 408.

I think if we attempted to debate this amendment in any lengthy manner we would be just plowing over the ground plowed over yesterday and today. I simply would like to say that again the administration, the President, and the Secretary of Health, Education, and Welfare have requested this amendment. They want it. I hope the Senate will support it.

The PRESIDING OFFICER. Who yields time?

Mr. SCOTT. Mr. President, will the Senator yield me 2 minutes?

Mr. MATHIAS. Mr. President, I yield 5 minutes to the Senator from Pennsylvania.

Mr. SCOTT. Two minutes are enough.

Mr. President, I think the issue is the same as before. The votes are running about the same as they did in December, on an average 4-to-3 ratio. I think we are all pretty sophisticated people around here, and I think we realize that very few of us are changing votes. Therefore, I rise only to say that I support the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I yield myself 10 minutes, and, of course, I will yield to any Senator who may wish some time.

I believe we can get to this issue quickly. There is a difference, however. There is a distinct and substantial difference between this amendment and the other one, and page 60 of the bill we have before us reflects this amendment.

The primary point I want to make—and there is no argument about this—is that this is a limitation on funds concerning the requirement of busing. That is a big part of the amendment. It does not have as far-reaching an element of so-called freedom of choice or anything of that kind which was contained in the amendment we just voted on.

I say to Senators who are interested and concerned and have felt the effects of the extensive requirement as to busing, this is the amendment you are vitally interested in, I believe. It does not involve any kind of court order. In my humble opinion, it does not touch top, side, or bottom any kind of court order or any restriction in the carrying out of any court order.

The limitations, as I understand it, on HEW is solely on the point of getting Federal funds. That is all. It is merely a limitation on an appropriation bill. It has absolutely nothing to do with the 14th amendment. It has nothing to do with any Supreme Court decision in the field of integration. I respectfully say it is a field in which I do not believe the Court has any jurisdiction, because Congress has the sole power to appropriate money, and under such conditions and limitations as the Congress may see fit. So it originates in the legislative branch of the Government. It ends in the legislative branch of the Government, except for the question of the President's signature. This language, clearly a limitation, is unmistakable as to what it means. It will continue in effect for only 4 months.

Mr. President, I believe I am entitled to an opinion on this, because I have been involved in this subject not for months, but for years. The provision will

not help or hinder HEW one iota, because of that short period, but it is a stop, look, and listen caution sign to HEW. The appropriation does not knock out any district in dealing with the money. It just puts a limitation on the administration of the funds. The provision will not bar the Court or be fatal to HEW. It will give an unmistakable sign—a red light—with respect to busing, and if Senators are interested in that question in their area, this is the way to do it.

I believe if this amendment were really understood and digested in this body, it would sweep through here like a forest fire. I mean Senators have gotten close enough to this problem, their constituents have, the parents have, the children have to know that something must be done. So let us put up a caution light, a red light, for 4 short months. We are not going to hurt HEW. We will then have a chance to have a new start.

Mr. COOPER. Mr. President, will the Senator yield for a question?

Mr. STENNIS. I yield.

Mr. COOPER. I always respect the Senator's views, but the Senator emphasized that section 409 has no meaning or objective except with respect to busing of students. I notice the language on lines 24 and 25 of page 60:

The abolishment of any school or the assignment of students to a particular school.

I know the Senator is making his point. A great many people are interested in the question of busing.

Mr. STENNIS. Yes.

Mr. COOPER. The Senator knows courts have ruled against the abolition of schools to maintain segregation, and the Supreme Court has ruled on that question. Of course, assignment of pupils could be a freedom of choice. I am not interpreting the Senator's amendment, but he made the statement that it was concerned only with busing. But the abolishment of any school is involved in that language.

Mr. STENNIS. Mr. President, that is my belief about this amendment, and I emphasize that this matter is so temporary that there is not going to be any real harm done, and I believe good will come out of it.

Mr. President, I believe no other Senator wishes to speak. We feel this matter has been fully debated already, because the other amendment was really broader than this.

Mr. MATHIAS. Mr. President, I yield back my time.

Mr. STENNIS. Mr. President, I yield back my time.

Mr. MAGNUSON. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. STENNIS. Mr. President, would the Chair state the parliamentary situation about the amendment?

The PRESIDING OFFICER. The question is on agreeing to the second Mathias amendment, which would add additional language to section 409. A "yea" vote is a vote to support the Mathias amendment. A "nay" vote is a vote to oppose the Mathias amendment.

The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NELSON. On this vote I have a live pair with the Senator from Louisiana (Mr. LONG). If he were present, he would vote "nay." If I were at liberty to vote, I would vote "yea." I therefore withhold my vote.

Mr. ALLOTT (after having voted in the negative). On this vote I have a live pair with the Senator from Rhode Island (Mr. PASTORE). If he were present, he would vote "yea." I have already voted "nay." I withdraw my vote.

Mr. MANSFIELD. On this vote I have a pair with the Senator from Washington (Mr. JACKSON). If he were present, he would vote in the affirmative. I have already voted in the affirmative. I withdraw my vote.

Mr. FULBRIGHT. On this vote I have a live pair with the Senator from Iowa (Mr. HUGHES). If he were present, he would vote "yea." I have already voted "nay." I withdraw my vote.

Mr. KENNEDY. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from Connecticut (Mr. DODD), the Senator from Iowa (Mr. HUGHES), the Senator from Washington (Mr. JACKSON), the Senator from Louisiana (Mr. LONG), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Rhode Island (Mr. PASTORE), the Senator from Maryland (Mr. TYDINGS), the Senator from Texas (Mr. YARBOROUGH), are necessarily absent.

I further announce that the Senator from Alaska (Mr. GRAVEL) is absent on official business.

I further announce that, if present and voting, the Senator from Alaska (Mr. GRAVEL), the Senator from Maryland (Mr. TYDINGS), and the Senator from Indiana (Mr. BAYH) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOK), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senators from Illinois (Mr. PERCY and Mr. SMITH), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Ohio (Mr. SAXBE) is absent on official business.

On this vote, the Senator from Kentucky (Mr. COOK) is paired with the Senator from Illinois (Mr. SMITH). If present and voting, the Senator from Kentucky would vote "yea" and the Senator from Illinois would vote "nay."

On this vote, the Senator from Illinois (Mr. PERCY) is paired with the Senator from South Dakota (Mr. MUNDT). If present and voting, the Senator from Illinois would vote "yea" and the Senator from South Dakota would vote "nay."

The result was announced—yeas 41, nays 34, as follows:

[No. 72 Leg.]

YEAS—41

Aiken	Brooke	Cranston
Anderson	Burdick	Dole
Bellmon	Case	Dominick
Boggs	Cooper	Eagleton
Fong	Magnuson	Pell
Goodell	Mathias	Prouty
Griffin	McCarthy	Proxmire
Harris	McGee	Ribicoff
Hart	McGovern	Schweiker
Hartke	McIntyre	Scott
Hatfield	Metcalf	Symington
Inouye	Mondale	Williams, N.J.
Javits	Muskie	Young, Ohio
Kennedy	Pearson	

NAYS—34

Allen	Gore	Russell
Baker	Gurney	Smith, Maine
Bennett	Hansen	Sparkman
Bible	Holland	Spong
Byrd, Va.	Hollings	Stennis
Byrd, W. Va.	Hruska	Talmadge
Cannon	Jordan, N.C.	Thurmond
Cotton	Jordan, Idaho	Tower
Curtis	McClellan	Williams, Del.
Eastland	Miller	Young, N. Dak.
Ellender	Murphy	
Ervin	Randolph	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—3

Allott, against.
Fulbright, against.
Nelson, for.

NOT VOTING—22

Bayh	Jackson	Percy
Church	Long	Saxbe
Cook	Mansfield	Smith, Ill.
Dodd	Montoya	Stevens
Fannin	Moss	Tydings
Goldwater	Mundt	Yarborough
Gravel	Packwood	
Hughes	Pastore	

So the second Mathias amendment, on page 60, line 22, was agreed to.

Mr. MATHIAS. I move to reconsider the vote by which the amendment was agreed to.

Mr. SCOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SCOTT. Mr. President, I call up my amendment to section 410 of the bill and ask that the clerk report it.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read the amendment, as follows:

On page 61, after line 2, strike out:

"SEC. 410. No part of the funds contained in this Act shall be used to provide, formulate, carry out, or implement, any plan which would deny to any student, because of his or her race or color, the right or privilege of attending any public school of his or her choice as selected by his or her parent or guardian."

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. SCOTT. I am glad to yield to the distinguished Senator from Washington.

Mr. MAGNUSON. For the benefit of the Senate, I will ask the Senator a question. This amendment is to strike out the so-called Jonas amendment?

Mr. SCOTT. That is correct.

Mr. MAGNUSON. Which is section 410, on page 61 of the bill.

Mr. SCOTT. That is correct. Line 3.

Mr. MAGNUSON. To vote it up or down.

Mr. SCOTT. To vote it up or down, assuming that there is no contrary motion.

Mr. STENNIS. Mr. President, will the Senator yield to me for a statement?

Mr. SCOTT. I yield.

Mr. STENNIS. Mr. President, I am opposed to the amendment offered by the Senator from Pennsylvania, for various reasons. The contents of this

amendment in many ways are similar to the other two amendments.

I want to yield to the distinguished Senator from North Carolina the time that is allotted to the opposition, and I may want some of that time for my own use.

I thank the Senator for yielding to me.

The PRESIDING OFFICER. Who yields time?

Mr. SCOTT. I yield myself 10 minutes.

Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. Senators will please take their seats, so that we may hear the Senator from Pennsylvania.

Mr. SCOTT. Mr. President, section 410 would work the same mischief as the original Whitten amendments—except for the additional fact that its implications for local educational policy are far more serious.

In essence, the purpose of this provision is to establish under Federal law a universal right to freedom of choice.

We must ask ourselves, in this regard, whether it is the proper function of Congress to place restrictions on local school boards and determine the manner by which they shall assign students. The effect of enacting section 410 would be to preempt the traditional authority of State governments and of local school authorities to establish educational policy.

Section 410 would sanction so-called "freedom-of-choice" desegration plans, even though such plans may not meet the requirements of title VI of the Civil Rights Act of 1964, or the mandate of the Supreme Court.

As indicated during the debate, the Supreme Court ruled, almost 2 years ago, that freedom-of-choice plans may not be constitutionally permissible. The test as to whether such a desegregation plan is or is not acceptable lies in the extent of desegregation accomplished in each and every case. Section 410 contravenes this crucial decision and would legalize freedom of choice in all school districts for the purpose of compliance with title VI.

In substance, section 410 would raise the specter of two contradictory standards of school desegregation. We have already heard much in this body about double standards, real or imagined. The Senate should know that the enactment of section 410 would impose upon all school districts conflicting standards—one applied by the courts and presumably the Justice Department, and the other applied by HEW.

I should like to repeat that. If this section is enacted, two sets of standards would have to be administered, each opposite to the other, and one would have to be administered by the Department of Justice and the other by HEW.

School districts intent upon cooperating with Federal officials in eliminating discrimination already face a difficult and demanding task. To place upon them the added burden of confusion imposed under section 410 is to make the job nearly impossible.

Mr. President, it is clear that, unlike sections 408 and 409, section 410 extends the privilege of so-called freedom of choice directly to parents. The provision thus circumvents the traditional power and jurisdiction of school districts.

In addition, it appears that section 410 would mandate the termination of Federal aid to any school district which implemented a plan that in any way denied to students and parents their freedom of choice. School districts are thus forced to make a painful and awkward decision: abide by the Federal nondiscrimination provisions against freedom of choice and you lose Federal funds; adopt freedom of choice in accordance with section 410, and invite court litigation which will inevitably require the implementation of something other than freedom of choice. So in one way you lose the funds and in the other way you lose what is allegedly sought in this section. Either way, the sponsors of the amendment lose something of value to their concept as well as to that of those who would strike.

Federal courts have been ordering desegregation which goes considerably beyond the limitations of mere freedom of choice. Section 410 would encourage school districts to defy the orders of the courts. Indeed, it appears that unless they did so, they would lose Federal education funds in accordance with section 410, which requires freedom of choice and nothing else.

Contemplate that for a moment. This section, as now written, says, in effect, to the school districts: "Defy the courts and lose the money. Unless you do so, you are going to lose the funds, because you are asking for freedom of choice and nothing else in the very complicated field of administration of the whole program."

Mr. President, I believe that Congress must attempt to provide every possible assistance to local school officials to enable them to work toward compliance with the law.

Section 410 attempts to escape this joint responsibility of Federal and local authorities. Instead of seeking to help school districts meet the requirements of the law, section 410 would place school districts in a wholly untenable situation. The provision's effect would be to force school districts into the arms of the courts, if they chose to follow the deceptive escape route designed in section 410. And, ironically, it is precisely the Federal courts which are demanding total desegregation now—to the abhorrence of those who support section 410.

Mr. President, I urge the adoption of the pending amendment, so as to preclude the chaos and confusion which would inevitably ensue if section 410 is retained in the bill. School districts deserve honest and forthright answers from the Congress as to their responsibilities under Federal law. Section 410 would lead us in the wrong direction.

The Secretary of HEW says in his letter to the chairman of the subcommittee on February 20, with reference to section 410:

> Insofar as the new section 410 of the bill is concerned, it is my belief that it may well have been born out of misunderstanding on the part of the House concerning the role and activities of the Office for Civil Rights of this Department.

Mr. President, I would like to make that point very clear because I think there is real misapprehension on the so-called Jones amendment.

I continue reading:

> Let me say that it is not the role of the Office for Civil Rights to interpret the Constitution and the law. That is the responsibility of the courts. Once the courts have acted, it is the responsibility of this Department to extend a helping hand to school districts in their efforts to comply with court decisions. Because the courts have already, in many instances, decreed that "freedom of choice plans" that result in discrimination are illegal, all that section 410 can do is prevent this Department from working with and helping local school districts who are trying to comply with such court orders. Because section 410 does not appear to be consistent with actions of the courts, it could only produce an administrative nightmare for our Department. If we are to avoid the administrative chaos that this section would produce at all levels, section 410 should be delected from the bill.

Mr. President, this is even more serious than the other two amendments.

Mr. MAGNUSON. Mr. President, will the Senator from Pennsylvania yield?

Mr. SCOTT. I yield.

Mr. MAGNUSON. Will the Senator put that entire letter from the Secretary in the RECORD? It covers many points in the whole bill and is the latest word from HEW. I neglected to put it in the RECORD before.

Mr. SCOTT. Yes.

Mr. President, I ask unanimous consent to have the letter printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

> DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
> *February 20, 1970.*
>
> HON. WARREN G. MAGNUSON,
> *Chairman, Subcommittee on Departments of Labor and Health, Education, and Welfare and Related Agencies, Committee on Appropriations, U.S. Senate, Washington, D.C.*
>
> DEAR SENATOR MAGNUSON: This letter contains our comments and recommendations on H.R. 15931, as passed by the House of Representatives yesterday, February 19.
>
> Statements are enclosed which describe the effect of the House action on H.R. 15931 wherever this action differs from either the President's budget, as amended, or from H.R. 13111 as passed by the Senate on January 26. I am also enclosing a listing of all the amendments which this Department recommends to H.R. 15931 as passed by the House. Otherwise, I would like to confine the contents of this letter to the implications of the House action in light of the President's veto of H.R. 13111.
>
> Let me express my judgment that the action of the House does not adequately respond to the objections that the President made to H.R. 13111 and that served as the basis for his veto. When examined in these terms, it is clear that the bill continues to carry the same excesses and faults that caused the President to veto this important and vital measure in the first place. Specifically, comparing the bill with each of the reasons cited by the President in his veto message, I find that it would—
>
> 1. Still add almost $900 million to the President's original budget for the Department of Health, Education, and Welfare and thereby continue the inflationary characteristics of the vetoed bill.

2. Still be the all-time high for increases over any President's budget for HEW—bar none. No previous Congress has ever added so much to the HEW appropriation for any year.

3. Still constitute by far the largest increase over the President's budget for any 1970 appropriation bill passed by the 91st Congress.

4. Continue to impose on the President large increases in mandatory formula grants programs over which the President can exercise little or no control in his management of the overall Federal budget. The bill as passed by the House carries more than $848 million in increases for mandatory formula grants without one single word of language or other authority that would give the President discretion over how and when these increases might be spent.

5. Still add large sums for what, in my opinion, are marginal or misdirected programs which need to be reevaluated or overhauled—not expanded. Many of these funds are for activities which could well be deferred until such evaluations and reforms are completed—or until inflation is checked.

6. Still add large sums that cannot be spent effectively so late in the fiscal year.

7. Continue to ignore the President's requests for new approaches and new initiatives for the future.

THE BILL CONTINUES TO BE INFLATIONARY

In his veto message, the President cited inflation as his first reason for veto. In his message, he said: "These increases are excessive in a period of serious inflationary pressure. We must draw the line and stick to it if we are to stabilize the economy." That statement was made about an increase in his original budget that added up to more than $1.2 billion. We contend that by dropping only $364 million, the House bill does not go far enough to meet the President's objection and in no way represents a "holding of the line."

Any bill that adds almost $900 million ($896 million to be exact) to the original budget request must be viewed as excessive during this critical time in the President's fight against inflation.

THE BILL TIES THE HANDS OF THE PRESIDENT BY INCREASING AMOUNTS FOR MANDATORY FORMULA GRANTS

In my opinion, this stands as the most grievous defect in the House bill. Despite the President's suggestion that this problem could be solved through the use of appropriation language giving him discretionary authority over such formula grants, the bill, as I said above, continues to force upon the President over $848 million in increases for mandatory formula grants. If he is to limit overall Federal spending, he must make offsetting reductions in other programs. With only 4½ months remaining, this places the President in an absolutely untenable position. Too much of the Federal budget is already committed to make such a large offset so late in the year.

This factor alone would make it impossible for me to recommend to the President that he accept the bill in its present form.

THE BILL STILL CARRIES TOO MUCH MONEY TO BE SPENT TOO LATE IN THE FISCAL YEAR

The President has already called our attention to what has been a traditional concern of the Congress, namely, that money not be appropriated so late in the fiscal year as to invite hasty and unwise expenditures. How often has the Congress challenged June buying by the Executive Branch? How often has the Congress cut supplemental appropriations because the money would come too late to be spent wisely? Yet, in this bill, the House seems to have turned its back on sound Congressional tradition. Unless the Senate reverses the House action, the President would stand alone as the only one who seems to advocate this kind of judgment. We have already lost almost a month since the Senate passed the last bill. This, combined with the continued rise in inflation, makes it all the more important that we pare down those portions of the bill that would result in end-of-year spending.

THE BILL CONTINUES TO ADD MONEY FOR MARGINAL PROGRAMS WHILE IGNORING THE PRESIDENT'S PRIORITIES

In his February 2 letter to the Speaker of the House, enclosed, the President proposed a compromise which would add $449.1 million to his original budget for HEW. Within this compromise were several programs for which the President expressed a willingness to accept Congressional increases in their entirety. In other instances, he proposed to meet the Congress part way. Proposals falling in this category had been weighed carefully for their merit and priority, for their inflationary impact, and in terms of whether additional money could be wisely spent between now and June 30. Except for Hill-Burton hospital construction, where the House bill comes close to adopting the President's February 2 alternatives, the action of the House brushes aside the President's compromise funding levels. The bill continues to carry large sums for school equipment, library books, and other deferrable purchases, while at the same time ignoring completely the President's request for reinstatement of two new initiatives—his request for funds to launch an experimental school program and enlarge the dropout prevention program.

RECOMMENDATION FOR SENATE ACTION

As I have already said, taken in its present form, I would have no choice but to recommend to the President that he veto H.R. 15931. Thus, I see the Senate is playing a vital role in avoiding another impasse. I hope that the Senate will be able to help the President reach his objective. I urge the Senate to take appropriate action to reduce the overall level of appropriations for this Department as proposed in H.R. 15931.

Based on statements by the President in his veto message, and based on the proposals that he made to the Congress in his letter of February 2 to the Speaker of the House, it is quite clear that the President desires to find an accommodation. There are two approaches open to the Senate, either of which I am confident, would be acceptable to the President. These are:

1. Modify H.R. 15931 so that it would reflect the proposals made by the President in his letter to the Speaker of February 2. In his letter, the President proposed amendments which provided increases over his original buget totaling $449 million. The President's proposals would result in a 1970 budget that totals $16,790,705,000. This would provide a total budget for this Department that is almost 10 percent higher that that approved by the Congress for 1969. The increases proposed by the President over the vetoed 1970 appropriation bill are as follows:

$238 million for impacted area aid

$70 million for basic grants for vocational education

$25 million for grants for education of the disadvantaged under Title I of the Elementary and Secondary Education Act.

$40 million in additional funds for supplementary education services and other forms of support to elementary and secondary education

$10 million for public library services

$6 million for education of the handicapped.

$8.8 million for education professions development

$29.7 million for the National Institutes of Health

$10 million to accelerate the rubella vaccination program

$7 million to intensify air pollution research efforts

$4 million for treatment of alcoholism

The listing of amendments enclosed would bring the bill into full agreement with the President's February 2 alternative.

2. The second course open to the Senate which would clearly, in my view, satisfy the President would be to include language in the bill giving the President discretionary authority over the so-called mandatory formula grants which make up such a large share of the bill. As the matter stands, the bill calls for almost $4.3 billion in mandatory formula grants.

Our enclosed list of recommended amendments includes a general provision which would, if adopted, resolve the issue.

In other words, the simple action of including this one piece of language in the bill could make it possible for the President to accept the bill. I would like to emphasize that should this course be adopted by the Congress, the President and this Department are committed to the obligation of all funds, including the so-called mandatory formula grants, to at least the levels indicated in the President's February 2 budget amendments. This, of course, includes impacted area aid.

As I have already said, this might well prove to be the quickest and simplest way to solve our problem. As I understand it, although a similar provision included in the House Committee bill was deleted on a "point of order" on the floor of the House, should such a provision be later adopted by the Senate and agreed to by House-Senate Conferees, the House rule would not permit its deletion a second time on a "point of order." In other words, if the Senate were to adopt this language, it seems to me that its chances for final approval by the Congress as a whole would be quite good.

GENERAL PROVISIONS IN H.R. 15931

There are three general provisions carried in the House bill which are of concern to this Department—sections 408, 409, and 410.

As you know, sections 408 and 409 are identical with provisions contained in H.R. 13111, as originally passed by the House. I would recommend that the Senate follow exactly the same course of action it followed in dealing with these provisions in H.R. 13111.

Insofar as the new section 410 of the bill is concerned, it is my belief that it may well have been born out of misunderstanding on the part of the House concerning the role and activities of the Office for Civil Rights of this Department. Let me say that it is not the role of the Office for Civil Rights to interpret the Constitution and the law. That is the responsibility of the courts. Once the courts have acted, it is the responsibility of this Department to extend a helping hand to school districts in their efforts to comply with court decisions. Because the courts have already, in many instances, decreed that "freedom of choice plans" that result in discrimination are illegal, all that section 410 can do is prevent this Department from working with and helping local school districts who are trying to comply with such court orders. Because section 410 does not appear to be consistent with actions of the courts, it could only produce an administrative nightmare for our Department. If we are to avoid the administrative chaos that this section would produce at all levels, section 410 should be deleted from the bill.

CONCLUSION

I believe, Mr. Chairman, that you are as anxious as we are to complete action on this appropriation bill. I respectfully request that the Senate modify the House bill along either of the two lines suggested above. Our Department stands ready to support and help you to this end in every way possible.

I have furnished Senator Cotton with a courtesy copy of this letter.

Sincerely,

———— ————,
Secretary.

REQUESTED AMENDMENTS

Amendments Requested by the Department of Health, Education, and Welfare to H.R. 15931 91st Congress, First Session in the Senate of the United States:

TITLE II—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

CONSUMER PROTECTION AND ENVIRONMENTAL HEALTH SERVICE

AIR POLLUTION CONTROL

1. Page 12, line 18, strike out "$108,800,000" and insert in lieu thereof "$102,800,000".

2. Page 12, line 199, strike out "$45,000,000" and insert in lieu thereof "$30,000,000".

HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION

MENTAL HEALTH

3. Page 14, line 11, strike out "$360,302,000" and insert in lieu thereof "$354,002,000".

4. Page 14, line 12, strike out "$47,500,000" and insert in lieu thereof "$41,200,000".

HOSPITAL CONSTRUCTION

5. Page 17, line 1, strike out "$176,123,000" and "$81,300,000" and insert in lieu thereof "$153,923,000" and "$50,000,000".

6. Page 17, line 6, strike out "$90,900,000" and insert in lieu thereof "$100,000,000".

7. Page 17, line 11, strike out the following:

"DISTRICT OF COLUMBIA MEDICAL FACILITIES

"For grants of $3,500,000 and loans of $6,500,000 for nonprofit private facilities pursuant to the District of Columbia Medical Facilities Construction Act of 1968 (Public Law 90–457) to remain available until expended."

NATIONAL INSTITUTES OF HEALTH

NATIONAL INSTITUTE OF ARTHRITIS AND METABOLIC DISEASES

8. Page 20, line 9, strike out "$146,334,000" and insert in lieu thereof "$137,668,000".

NATIONAL INSTITUTE OF NEUROLOGICAL DISEASES AND STROKE

9. Page 20, line 14, strike out "$106,978,000" and insert in lieu thereof "$101,256,000".

NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES

10. Page 20, line 19, strike out "$103,694,-500" and insert in lieu thereof "$102,389,000".

NATIONAL INSTITUTE OF GENERAL MEDICAL SCIENCES

11. Page 21, line 2, strike out "$164,644,000" and insert in lieu thereof "$154,288,000".

GENERAL RESEARCH AND SERVICES

12. Page 21, line 24, strike out "$76,658,000" and insert in lieu thereof "$69,698,000".

HEALTH MANPOWER

13. Page 22, line 15, strike out "$234,470,-000" and insert in lieu thereof "$224,220,000".

DENTAL HEALTH

14. Page 23, line 14, strike out "$11,722,000" and insert in lieu thereof "$10,887,000".

BUILDINGS AND FACILITIES

15. Page 24, line 9, strike out "$1,900,000" and insert in lieu thereof "$1,000,000".

OFFICE OF EDUCATION

ELEMENTARY AND SECONDARY EDUCATION

16. Page 26, line 18, strike out after "titles" the numeral "II".

17. Page 26, line 22, strike out the following "$252,393,000; of which $50,000,000 shall be for school library resources, textbooks, and other instructional materials under title II of said Act of 1965; $116,393,000" and insert in lieu thereof "$220,393,000, of which $156,-393,000".

18. Page 27, line 1, strike out the following "$17,000,000 shall be for guidance, counseling, and testing under title V–A of said Act of 1958".

19. Page 27, line 5, strike out "$5,000,000" and insert in lieu thereof "$15,000,000".

20. Page 27, line 8, strike out "$25,000,000" and insert in lieu thereof "$10,000,000".

21. Page 27, line 12, strike out "$386,160,-700" and insert in lieu thereof "$240,185,700".

22. Page 27, line 18, strike out the following:

"INSTRUCTIONAL EQUIPMENT

"For equipment and minor remodeling and State administrative services under title III–A of the National Defense Education Act of 1958, as amended, $43,740,000: *Provided*, That allotments under sections 302(a) and 305 of the National Defense Education Act, for equipment and minor remodeling shall be made on the basis of $40,740,000 for grants to States and on the basis of $1,000,000 for loans to nonprofit private schools, and allotments under section 302(b) of said Act for administrative services shall be made on the basis of $2,000,000."

SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS

23. Page 28, line 7, strike out "$520,567,000 of which $505,500,000" and insert in lieu thereof "$440,167,000 of which $425,000,000".

24. Page 28, line 18, strike out "." and insert

": *Provided further*, That the amount to be paid to an agency pursuant to said title (except section 7) for the current fiscal year shall not be less, by more than 5 per centum of the current expenditures for free public education made by such agency for the fiscal year 1969, than the amount of its entitlement under said title (exception section 7) for the fiscal year 1969."

EDUCATION PROFESSIONS DEVELOPMENT

25. Page 28, line 23, strike out "$107,500,000, of which $18,250,000" and insert in lieu thereof "$103,750,000, of which $15,000,000".

HIGHER EDUCATION

26. Page 29, line 18, strike out "$871,874,000" and insert in lieu thereof "$771,774,000".

27. Page 30, line 12, strike out the following "and $33,000,000 shall be for grants for construction of other academic facilities"

28. Page 30, line 17, strike out "$222,100,000" and insert in lieu thereof "$155,000,000".

VOCATIONAL EDUCATION

29. Page 31, line 5, strike out "$391,716,000" and insert in lieu thereof "$347,216,000".

30. Page 31, line 7, strike out the following:

"$20,000,000 shall be for programs under section 102(b) of said Vocational Education Act of 1963, including development and administration of State plans and evaluation and dissemination activities authorized under section 102(c) of said Act, and $5,000,000 for work-study programs under part H of said Act,"

31. Page 31, line 13, strike out "$2,800,000" and insert in lieu thereof "$1,680,000".

32. Page 31, line 18, strike out "$17,500,-000" and insert in lieu thereof "$15,000,000".

LIBRARIES AND COMMUNITY SERVICES

33. Page 31, line 23, after "I" strike out "II".

34. Page 32, line 5, strike out "$148,881,-000, of which $35,000,000" and insert in lieu thereof "$117,709,000, of which $27,500,000".

35. Page 32, line 8, strike out the following:

"$9,185,000, to remain available through June 30, 1971, shall be for grants for public library construction under title II of such Act,".

36. Page 32, line 17, strike out "$6,737,000" and insert in lieu thereof "$4,500,000".

37. Page 32, line 22, strike out "$5,083,000" and insert in lieu thereof "$4,000,000".

EDUCATION FOR THE HANDICAPPED

38. Page 33, line 11, strike out "$100,000,-000, of which $29,190,000" and insert in lieu thereof "$91,850,000, of which $29,250,000".

RESEARCH AND TRAINING

39. Page 33, line 22, strike out "$85,750,-000" and insert in lieu thereof "$95,250,000".

40. Page 34, line 7, strike out "." and insert the following:

"and $9,500,000 to remain available through June 30, 1971, shall be available under said Cooperative Research Act for experimental schools."

SOCIAL AND REHABILITATION SERVICE

GRANTS FOR REHABILITATION SERVICES AND FACILITIES

41. Page 37, line 16, strike out "$464,783,-000" and insert in lieu thereof "$461,283,000".

42. Page 37, line 23, strike out "$4,050,000" and insert in lieu thereof "$550,000".

MENTAL RETARDATION

43. Page 38, line 23, strike out "$37,000,000 of which $12,031,000" and insert in lieu thereof "$33,000,000, of which $8,031,000".

MATERNAL AND CHILD HEALTH AND WELFARE

44. Page 38, line 11, strike out "$284,800,-000" and insert in lieu thereof "$282,400,000".

TITLE IV—GENERAL PROVISIONS

45. Page 60, line 19, after "408." insert "Except as required by the Constitution".

46. Page 61, line 1, after "409." insert "Except as required by the Constitution".

47. Page 61, after "410." strike out the following:

"No part of the funds contained in this Act shall be used to provide, formulate, carry out, or implement, any plan which would deny to any student because of his or her race or color, the right or privilege of attending any public school of his or her choice as selected by his or her parent or guardian." and insert in lieu thereof

"In the administration of any program provided for in this Act, as to which the allocation, grant, apportionment, or other distribution of funds among recipients is required to be determined by application of a formula involving the amount appropriated or otherwise made available for distribution, the amount available for expenditure or obligation (as determined by the President) shall be substituted for the amount appropriated or otherwise made available in the application of the formula."

Mr. COTTON. Mr. President, will the Senator from Pennsylvania yield?

Mr. SCOTT. I yield.

Mr. COTTON. Do I correctly understand that it is clearly the policy of the Federal courts and the Department of Justice to deny, in some cases at least, the right of the student to attend the school of his choice, and the choice of his parents or guardian, because of his race or color?

Mr. SCOTT. I can answer that. It is not the intention of the Department of Health, Education, and Welfare or the Department of Justice, acting through sui respondi to deny such a thing. The letter from the Secretary points out that that is not the role of HEW, or the Department of Justice I might add; but points out that the courts have already, in many instances, decreed that freedom of choice plans that result in discrimination are illegal.

Therefore, there are some freedom of choice plans, I understand, which would be entirely legal which might create no court problem at all but, insofar as the courts have or shall hereafter determine a freedom of choice plan to be

illegal, the Department of Health, Education, and Welfare and the Department of Justice have nothing to do except to abide by the law. That is the point.

Mr. COTTON. But in many cases, then, there are some cases where the law does deny the right of the student to attend the school of his choice because of his race or color. Right?

Mr. SCOTT. I would not say that I can agree it is because of his race or color. The courts have, at times, ruled illegal certain freedom of choice plans which they feel are discriminatory against one race or another because of his race or color.

Mr. COTTON. I do not want to nitpick here, but I find myself somewhat confused after all these years in which we have been voting on civil rights and on matters of discrimination. This talking about freedom of choice plans is one thing, but freedom of choice is another. I find it extremely difficult in this simple section, 410, where it says:

SEC. 410. No part of the funds contained in this Act shall be used to provide, formulate, carry out, or implement, any plan which would deny to any student, because of his or her race or color, the right or privilege of attending any public school of his or her choice as selected by his or her parent or guardian.

If, in controlling the money that we take from the taxpayers and spend under this HEW bill, by the simple proposition that we will not allow anyone to be denied the right, strictly because of race or color, if that is inconsistent with the courts and the policy of the Department of Justice, then it seems to me that all these years we have been marching up the hill and marching down again.

I cannot conceive of how anyone thoroughly devoted to stopping discrimination because of race or color can go on record voting against this section.

Mr. SCOTT. If the Senator would permit me to explain, perhaps to adumbrate the point a little bit here, I think the misunderstanding is because of the emphasis he has placed on the words "race or color."

The "race or color," as stated in that paragraph, is not the thought of the paragraph which creates the difficulty. What the section does, as now written in the bill, is to leave to the parent or guardian of any student the right to determine where that student shall go and, in so doing, by that seemingly innocuous phrase, substitutes the right of every parent in that area for the right of the school district.

Heretofore, in America, the school district determined where the student would go and where the area would be. The school district sets up the schools. It hires the teachers. It provides all the facilities which will be available. It provides for the standards, the rules, and the guidelines, whether someone goes to a primary school, an elementary school, a grammar school, or a high school, on account of certain qualifications.

To make the point, what this amendment does is to say to all the school districts of America, "You no longer have any authority over the children. Only the parent decides where they go."

Mr. COTTON. I think I understand what the Senator is saying. I am not trying to confuse the issue, but if I understand him correctly, if a plan has been approved by a court——

Mr. SCOTT. Or by a school district.

Mr. COTTON. Or by a school district, reasons other than strictly race or color, that that plan is proper and can be pursued for reasons of school administration.

Mr. SCOTT. If it is not otherwise a violation of the law, yes.

Mr. COTTON. The courts decide whether the motives of the plan are race or color or whether the motives are proper motives of administration.

Mr. SCOTT. The courts decide.

Mr. COTTON. Is it any more difficult for the Secretary of Health, Education, and Welfare to pass on the motives and decide whether someone is denied a right to go to a school for reasons of race or color, or for reasons of school administration, than it is for the Department of Justice or the courts?

Mr. SCOTT. I would answer the Senator from New Hampshire by saying that it is not a question of whether it is difficult for the agency to decide that matter, but the fact is the courts decide the matter. The school district and not the Department of Health, Education, and Welfare, whose office is solely for the purpose of administering the law as they find it, as they receive it from the courts. If the courts have then said that certain freedom of choice plans are illegal, and if Congress comes in now and says that the Department of Health, Education, and Welfare cannot administer the law as the courts have decided it—and that is what this section provides—then we have administrative chaos in the office of HEW, because they cannot enforce the law. They do not make the judgment.

Mr. COTTON. Mr. President, to prevent chaos, we have to authorize the use of the taxpayers' money to follow a course, even if the Secretary of Health, Education, and Welfare knows right well that the decision of the court took into consideration and was based, at least partially, on the matter of race or color.

Mr. SCOTT. Mr. President, I thank the Senator.

Mr. MURPHY. Mr. President, will the Senator yield?

Mr. SCOTT. I yield.

Mr. MURPHY. Mr. President, it seems to me that the key words, as the Senator has pointed out, are race or color, which, again, seem to be unnecessary because under the Constitution this would be unconstitutional. Therefore, I do not understand an objection to the section.

Mr. SCOTT. Mr. President, what is illegal by determination of the courts, I may say to the Senator, is not the reference to race or color, which is merely a phrase which defines the problem, but what is illegal is the so-called right of the parent or guardian to supersede the right of the school district in determining what is to be done.

Mr. MURPHY. It does not say that. The entire section is based on the key words, race or color. If we take them out, in my judgment it becomes discriminatory.

Mr. SCOTT. Mr. President, not at all. The key words here are, "the right or privilege of attending any public school of his or her choice as selected by his or her parent or guardian." That is what the courts have said.

Mr. MURPHY. It says, "because of his or her race or color." We are not in disagreement. I believe that what the Court says is proper. But this change says they cannot do it on the basis of race or color alone.

Mr. SCOTT. I am glad we are not in disagreement. I think we are merely endeavoring to struggle out of a morass of confusion.

Mr. DOMINICK. Mr. President, will the Senator yield?

Mr. SCOTT. I yield.

Mr. DOMINICK. Mr. President, I have been supporting the Senator on these amendments. I do not know that I can support the Senator on this amendment. I do not understand why he takes the position he did.

It seems to me that we should not require the assignment of children to a school solely on the basis of color. If they are to be assigned on the basis of school district or divisions within a county by a school board for convenience, that would be all right.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SCOTT. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 2 minutes.

Mr. DOMINICK. But when we start to assign them solely because of color, it seems to me that we have something that is fundamentally opposed to the Civil Rights Act as well as the Constitution. So I do not understand how we can authorize the use of Federal funds to do something which we think is in violation of the Civil Rights Act and the Constitution.

Mr. SCOTT. Mr. President, I can only say that the purport of the Jonas amendment is to permit any student to go to any school he wishes to attend if he shall be so designated as attending that school by his parent or guardian. And it forbids the use of HEW funds to implement any plan. And if we leave out the words "race or color" and then come back to it, I think the Senator will see what I mean.

Mr. DOMINICK. I do, because I was on your side.

Mr. SCOTT. It says, "The right or privilege of attending any public school of his or her choice." With this amendment, whether it is because of race or color, any parent or guardian can make a determination and can remove from the school district the right to make that decision. It is in the hands of the parent or guardian to say, "I am exercising freedom of choice." If there is discrimination against any child on account of race or color, the Secretary has said, "Don't ask me to try to enforce this, because the courts have said it is illegal. I cannot enforce it." And that is administrative chaos.

The PRESIDING OFFICER. The time of the Senator has expired.

Who yields time?

Mr. ERVIN. Mr. President, I yield myself such time as I may require.

This is the first time that anyone has been bold enough to assert on the floor of the Senate that we will do mischief if we restore some little liberty to the parents of children by forbidding HEW to spend money to deny those children the right to attend their school because of their race or color.

Mr. TALMADGE. Mr. President, may we have order in the Senate, so that we can hear the Senator?

The PRESIDING OFFICER. There will be order in the Senate so that we may hear the Senator from North Carolina.

Mr. ERVIN. Mr. President, I have stated several times on the floor of the Senate that this constant agitation on racial matters has impaired our national sanity. I think that in this instance it has dethroned it.

I ask Senators to read what this says. It says:

No part of the funds contained in this Act shall be used to provide, formulate, carry out, or implement, any plan which would deny to any student, because of his or her race or color, the right or privilege of attending any public school of his or her choice as selected by his or her parent or guardian.

In other words, all it says is that HEW cannot spend any of the funds appropriated by this act to deny a child, solely on the basis of his race or color, the right of attending the school selected for him by his parents.

I am not impressed when a bureaucrat objects to having any of his authority diminished. I think the most healthful thing that could happen in this country would be to take some of the authority away from the bureaucrats and give freedom back to the people of this Nation.

This provision, section 410, not only recognizes that a parent should be allowed to select the school for his child, but it also recognizes the Brown decision and implements the Civil Rights Act of 1964.

This is not such a great freedom of choice measure as it is a measure to prevent children from being denied the right to go to a particular school on account of their race or color. Yet, we are asked by those who would strike section 410 to tell the Department of Health, Education, and Welfare that it can use funds to deny a child the right to attend a school on account of his race or color. Such action is exactly what the Brown case said was unconstitutional.

Down in my country about the turn of the century, we had a very fine bricklayer, but he was a poor theologian. His name was John Watts.

John would go out and ask the little country churches that had no pastors to let him preach. One day he was preaching away in this little country church.

Another of the citizens of my county, Joe Hicks, who had had several drinks of Burke County corn, came staggering by. I have heard rumors to the effect that Burke County corn is a very potent beverage. When Joe Hicks saw John in the pulpit he staggered up the aisle, dragged him to the door and threw him out. He was indicted for disturbing a religious worship, and the jury returned a verdict of guilty. Judge Robinson, the presiding judge, evidently had about the same appraisal of John's preaching ability and theological knowledge as Joe Hicks displayed, so he sought some way to let Joe off as light as possible.

He said in a stern voice:

Mr. Hicks, when you were guilty of this unseeming conduct on the Sabbath Day you must have been so drunk as not to realize what you were doing.

Joe Hicks said:

Your Honor, I had had several drinks but I wouldn't want Your Honor to think I could stand by and hear the word of the Lord being mummicked up like that without doing something about it.

Mr. President, we have heard this phraseology of section 410 mummicked up by the distinguished minority leader. He is worrying about what school boards in the States might do or have to do. This has no application to the school boards in the State. This only applies to HEW, and that is all it says. It says:

You cannot use funds appropriated to carry out a plan which would deny to a child the right to attend the school selected by his parent or guardian because of his race or color.

We had references to the 14th amendment a little while ago. There is not a syllable in the equal protection clause which places any limitation whatever on the freedom of a parent or on the freedom of a schoolchild, none whatever. The only limitation is a limitation upon the power of a State and its subdivisions; and here we would say that HEW, by reason of this provision being struck out, can use the funds appropriated to it to require a State to deny a child the right to attend a school because of the child's race and color. I say opponents of section 410 have been mummicking up acts of Congress.

For example, we passed a law that is in perfect harmony with the Jonas amendment. Here is what it said. I refer to title IV of the Civil Rights Act of 1964:

"Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.

That provision states in about as plain English as can be done that in assigning students to public schools, agencies of the State shall not take into consideration a student's race or color. Yet, the proposal of the distinguished Senator from Pennsylvania to strike out the Jonas amendment is a proposal, in effect, to allow the Department of Health, Education, and Welfare to use the funds appropriated to it by this act to compel school boards to deny schoolchildren the right to attend the school selected by their parents because of the race and color of those schoolchildren.

Mr. CASE. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. CASE. I take it the Senator does not contend that apart from this section there is any inhibition on a local school board from using whatever means it thinks desirable to eliminate racial segregation in its own schools.

Mr. ERVIN. No. It prohibits HEW from telling the school board that they will not get any funds unless they bar children from the school on account of race or color. That is what it says.

Mr. CASE. Mr. President, will the Senator yield further?

Mr. ERVIN. I yield.

Mr. CASE. I think the Senator somewhat understates what the section says, but apart from that, that was not my question. If the Senator will permit me, I shall repeat my question.

Mr. ERVIN. The English language is my mother tongue. I think I understand what it says when it speaks plain English.

Mr. CASE. I was not asking the question about what this section states. I said apart from this section is it true a local school board is not disabled from using whatever means it wants to achieve racial balance in its system?

Mr. ERVIN. This does not apply to the local school board; it applies to HEW.

Mr. CASE. But apart from this, is it wrong, is it against the law for a local school board to attempt to desegregate its schools?

Mr. ERVIN. No, it is not.

Mr. CASE. Will the Senator yield further?

Mr. ERVIN. I only have a limited period of time.

Mr. CASE. I am sure the Senator would allow time on the bill, and I do want the Senator to use it. This is of great interest to us, my colleagues, and me, if the Senator will permit me to include myself in that happy group. On this section, now——

Mr. ERVIN. I assure the Senator it would be a much happier group if they were willing to give freedom of choice to the parents of schoolchildren and say that the right to assign children in schools should not be denied by HEW on account of race or color. That is what the section says.

Mr. CASE. I suggest to the Senator that his statement of the effect of this, and, indeed, its terms, in spite of his great command of the English language—which he should not have to brag about because all of us would testify to it—but in spite of that what the Senator said about this is not an adequate description. It would not just prevent HEW from forcing the school board, but it would also apply to the local school board.

Mr. ERVIN. That is not what it says The section states:

SEC. 410. No part of the funds contained in this Act shall be used to provide, formulate, carry out, or implement, any plan which would deny to any student, because of his or her race or color, the right or privilege of attending any public school of his or her choice as selected by his or her parent or guardian.

Mr. CASE. May I state the question one other way? Does the Senator contend that even if this section should be agreed to and stay in the bill it would be possible for Secretary Finch to give to any school board funds to help it work out a program of desegregation that it decided on including, if you will, assignment of pupils?

Mr. ERVIN. Not if that plan undertook to deny a child's parents the right to select a school for him because of

the race or color of the child. That is what it says.

Mr. CASE. Thus limiting the right, am I right, that this section as it stands is designed to do, of a school board?

Mr. ERVIN. It puts the limitation on HEW. It says HEW cannot use the money to implement a plan which denies the right to any child to attend a school because of his race or color.

Mr. CASE. No. It says "no part of the funds" shall be used. That includes anybody, including a school board.

Mr. ERVIN. It says none of these funds shall be used to implement a plan which denies, on the basis of race or color, the right of a child to attend a school selected by his parents.

Mr. CASE. Exactly; and that means a plan whether promulgated by HEW or a local school board.

Mr. ERVIN. I would like to yield more time to the Senator——

Mr. CASE. Would the Senator respond to that question? By whomever that plan is promulgated, the funds are denied for that kind of plan?

Mr. ERVIN. That is right.

Mr. CASE. I thank the Senator.

Mr. ERVIN. It denies funds to be used for any plan that denies a child the right to attend a school selected by his parents, because of his race or color. That is plain English, and should be easily understandable.

Mr. President, I was speaking of the equal-protection clause. The equal-protection clause is one of the simplest provisions in the Constitution. It is so notwithstanding attempts by bureaucrats and some Federal judges to make it obscure. All it says is that no State shall deny to any person within its jurisdiction the equal protection of the laws.

That is a very good provision. What it intended is to prevent a State from having one law for one man or one group of men and another law for another man or a group of men when those men or those groups are in like circumstances.

It is also just as clear as the noonday sun in a cloudless sky that when a school board opens all the schools within its jurisdiction to children of all races and permits those children or their parents to select the school that they will attend, that is the most perfect compliance with the equal-protection clause that can be devised. This is true simply because a freedom-of-choice plan of this nature treats everybody, all parents and all children of all races, exactly alike, and oceans of judicial sophistry cannot wash out this plain truth.

There is a decision in the Supreme Court called Green against New Kent County. The facts in that case are simple. The opinion itself is ambiguous and murky. It lays down no fixed or understandable or workable rules. I might say to my brethren from the cities of the North, where they have large colored populations segregated in residential sections, that that is a decision which, if it means anything, applies to de facto segregation, and not what some are pleased to call de jure segregation.

I say that for this reason. Three years before Justice Brennan wrote the opinion in that case, the school board of New Kent County had abolished the last vestige of State-imposed segregation, and had extended to the children of that county, both black and white, full freedom to attend whichever one of the two schools in the county that they wished to attend.

The only obligation placed on the States by the Brown decision and the only obligation placed on the States by the Civil Rights Act of 1964 is that they will not discriminate against any child by denying him the right to attend a school on account of his race.

We are in the unfortunate situation in this country today of disregarding the very sound advice given to us by one of the wisest of our sons, Benjamin N. Cardozo, chief judge of the Court of Appeals of New York, and afterward Associate Justice of the Supreme Court of the United States. Justice Cardozo said that when we strike off one set of shackles, we ought not to substitute for them another set of shackles. Yet that is precisely what HEW is trying to do today. It is trying to substitute for outlawed State-imposed segregation, federally coerced or federally briefed integration.

So in the Green case, where the children of New Kent County were allowed perfect freedom of choice, the Court struck down the system in that county. The Court did say, however, that freedom of choice could be used. The Court said that that freedom of choice in this case did not comply with the second Brown requirement that children should be admitted to school on a nonracial basis.

If this holding means anything, it means that where there is de facto segregation, and not just de jure segregation, there cannot be freedom of choice unless the black and the white children of the school district mix themselves racially in the schools in a manner pleasing to the Supreme Court Justices.

The Supreme Court Justices in that case did not say what would please them, but they struck down that system. They destroyed freedom in a de facto segregated community—segregated as far as the schools were concerned because the children wanted it that way.

The Senator from Michigan made a very fine plea for freedom of choice in such instances when this matter was before the Senate on February 17, in another form. I speak of Senator GRIFFIN.

Senator GRIFFIN said at that time:

> It is common knowledge that other minority groups smetimes live together and choose to go to school together out of choice. People of Polish descent and people of the Jewish faith often do so. Perhaps in some instances it is because of discrimination. If there is discrimination, that is wrong and we should do something about that.
>
> If it is by choice, then are we going to say that because there is an imbalance in a particular school that, ipso facto, we have de facto segregated schools and we must bus these people across town?

Like Senator GRIFFIN, I happen to entertain a conviction that people segregate themselves in society on the basis of race because they choose to do so, and that in so choosing they are acting in obedience to a natural law. It is not surprising to me that forced integration has proved a failure, because the American people love liberty and they do not like coercion. The United States is supposed to be a free society and we are told that was the reason that this country was founded.

Despite the fact, HEW wants to convert little children, both black and white, into helpless puppets on a bureaucratic string. We find here in the Senate this same sentiment that we must rob little children of their choice, and that we can do that by permitting HEW to use funds to deny a child the right to attend the school selected by its parents, even on the basis of the child's race or color. The Jonas amendment would prohibit this action.

God gave little children to their parents. He did not give them to the bureaucrats in HEW. It is time that we took the children away from HEW and gave them back to their parents.

Children are now being denied the right to attend their neighborhood school because of their race or color. They are denied that right under plans formulated by HEW. HEW says to some students, "You cannot attend your neighborhood schools either because there are too many children of your race and color there already, or because we need children of your race or color to mix the races in some school elsewhere."

That is all that the Jonas amendment, section 410 of this bill, undertakes to prohibit. It just says that HEW will give to the people the right to select the school their children shall attend, and that when they select the school for their children to attend, their children shall not be denied access to that school by the use of funds appropriated to HEW on account of the race or color of those children.

There is no doubt of the fact that HEW is denying children the right to attend their neighborhood school because of their race. It has done it all through North Carolina. It is doing it every day. It takes little children who live across the street from schools and denies them the right to attend those schools on account of their race or color, either because there are too many of their race and color already in those schools, or because they need some of their race and color to mix the schools elsewhere.

That is denying the right to attend school on account of a child's race or color, and that is all the Jonas amendment undertakes to prevent, by providing that the funds of HEW shall not be used for that purpose.

Mr. TALMADGE. Mr. President, will the Senator yield at that point?

Mr. ERVIN. I am happy to yield to the Senator from Georgia.

Mr. TALMADGE. Is not that diametrically opposed to what the Brown decision held in 1954, when it held we must be colorblind and not color conscious?

Mr. ERVIN. Yes. In other words, those who want to favor forced integration of schools against the *will of the* people are like the man who was lost in the woods one night, and was found by a satyr who took the man to his home. It was cold,

and as they were approaching the satyr's home the man blew on his hands. The satyr said, "What are you doing that for?"

He said, "To warm my hands."

When they got to the satyr's home, the satyr set a smoking dish of porridge in front of the man, and the man blew on the porridge. The satyr asked, "What are you blowing on the porridge for?"

He said, "To cool it."

The satyr said, "Out with you. I will have nothing to do with a man that blows hot and cold with the same breath."

HEW blows hot and cold with the same breath. It says you must assign children to schools without taking their race into consideration, and in the next breath it says you must assign children to schools on the basis of their race or color. All that the Jonas amendment undertakes to do is to say that HEW can use all the funds appropriated to it which are to be used by it to keep a State agency from denying a child the right to attend a school on account of its race or color, but it cannot use funds appropriated to it to do exactly the opposite, and deny a child the right to attend the school selected by its parents on account of the child's race or color.

As I have stated, the New Kent County case is a case which has no meaning other than the meaning that you can have freedom of choice in a school system if the children exercise their freedom of choice in a manner pleasing to Supreme Court Justices, but you cannot have freedom of choice in a school system if the children exercise their freedom of choice in a manner displeasing to Supreme Court Justices.

The holding in the Green case is a distortion of our Constitution, which was intended to establish a free society. The American people do not hold their freedom by any such arbitrary, capricious, tyrannical, and slender judicial thread as that.

Mr. President, I yield the floor.

Mr. HOLLAND. Mr. President, before the Senator yields the floor, will he yield for one question?

Mr. ERVIN. I yield.

Mr. HOLLAND. Mr. President, I understood that the decision in the Brown case meant that it was held by our highest court to be unconstitutional to deny to any student, because of his or her race or color, the right or privilege of attending any public school. Am I correct in that understanding?

Mr. ERVIN. That is exactly what it held, and that is exactly what the Civil Rights Act of 1964 says.

Mr. HOLLAND. I call to the Senator's attention that this amendment, section 410, uses those very words, and I read it:

> No part of the funds contained in this Act shall be used to provide, formulate, carry out, or implement, any plan which would deny to any student, because of his or her race or color, the right or privilege of attending any public school of his or her choice as selected by his or her parent or guardian.

The additional words are added to show that the public school chosen by the student was the choice of the parent or guardian.

I ask the distinguished Senator if it is not the fact that this amendment, in essence, simply holds that no part of the funds contained in this act shall be used to fund a denial of the right announced in the Brown case.

Mr. ERVIN. That is right. It is certainly right down the road and in complete harmony with the Brown case.

However, those who believe in forced integration want to take it both ways. They want to blow hot, and use the Brown case, and then blow cold and arrive at a decision completely opposite to and in conflict with the Brown case.

Mr. HOLLAND. I just want to ask the distinguished Senator if it is not his understanding, in construing this section that the word "deny"—the denial—relates to the following words: "because of his or her race or color"; that the denial is because of race or color.

Mr. ERVIN. Yes. That is exactly it.

Mr. HOLLAND. I thank the Senator. I cannot see how anyone who claims to believe that the constitutional right announced by the Brown case should be enforced could oppose the enactment of this amendment.

Mr. ERVIN. I cannot, either, unless they are so bent on forced integration that they want to uphold the Brown case where it will produce forced integration and violate it where that violation will produce forced integration.

In other words, they want to take away all the liberty from the parents and schoolchildren in America to accomplish these objectives. Any Senator who believes that America should be made a free society and that the children which God gave to the parents should be given back to them and taken away from HEW ought to vote against the amendment proposed by the distinguished minority leader.

I yield to the Senator from Mississippi such time as he may use from the time I have remaining.

Mr. STENNIS. I thank the Senator. Mr. President, how much time remains?

The PRESIDING OFFICER. There are 22 minutes.

Mr. STENNIS. Mr. President, as one who has given special attention to these amendments and the subject matter, I respectfully submit to the Senate that this is what the amendment means, as I see it.

The key words begin on line 5 and end on line 6: "because of his or her race or color."

The Supreme Court of the United States, in the case of Brown against Board of Education, in 1954, clearly held that a State or any subdivision thereof could not deny to any person admission to a school—any person who was otherwise eligible—on account of race, color, or national origin. That was a basic, simple, fundamental, elemental holding, and they based it on the Constitution of the United States. That is controlling; that is the law.

The amendment under discussion really says that HEW shall not do this very thing. That is the key word, as I see it, in this amendment: HEW shall not deny to any student, because of his or her race or color, the right or privilege of attending any public school of his or her choice, as designated by the parents.

We talk about race and color. What color are we talking about? It does not always mean black people or other people of color. It includes white people. They are people, too. They should not be discriminated against.

That is the effect, in a way, of what is happening now, when children are in a place where they have a right to be and they are hauled out for the purpose of balancing the rolls—numbers, or a certain proportion—mixing. This goes back to the fundamentals. It is in keeping with the amendment adopted by the Senate last week that provides, as a matter of policy, that what is done shall be done uniformly.

What the Supreme Court struck down was a law that discriminated according to color; and now, in these requirements, whatever they are, it just says there cannot be discrimination against anyone, regardless of color. I think that is a rather simple, elemental, and fundamental thing. It is based solely on that point, as I understand it.

I hope that the Senators will give it proper attention. It is a new amendment. I believe they will reach that conclusion; and if they do, it will be compelling that they vote to keep that provision in the bill.

I conclude my remarks.

Mr. SCOTT. I yield 2 minutes to the Senator from New York (Mr. JAVITS).

Mr. JAVITS. I appreciate very much the time yielded.

Mr. President, the issue is almost the same as we have faced right along. We are told that because X is wrong, Y should be condoned. That is essentially what the argument here is.

The key to the amendment proposed by the Senator from Pennsylvania (Mr. SCOTT) relates to the word "plan," which is at line 3, page 61:

> No part of the funds . . . shall be used to provide, formulate, carry out, or implement, any plan . . .

That plan must be presumed to be a lawful plan. If it is an unlawful plan, it obviously cannot be aided by HEW. So if it is a lawful plan, it is not a plan which discriminates contrary to the law. It is a plan which has been devised after a freedom of choice plan of a given school district has been turned down either by a court or HEW.

Under section 410 of the act, notwithstanding that a court may order a new plan or that HEW may accept it, HEW would be prohibited from giving any funds to aid in implementing it. That is what it comes down to. If it is a lawful plan, it is a plan which does not unlawfully discriminate, and it must be a plan which is substituted in some way by a court or by HEW for a freedom of choice plan.

Notwithstanding the fact that an unlawful plan containing a freedom of choice provision may have been displaced by a lawful plan, this section, if it stood, would deny HEW the authority to provide any money to implement that lawful plan because the unlawful plan contains freedom of choice.

It seems to me that we are being asked to stand on our heads, and I hope very much the Senate will not do that.

Mr. SCOTT. Mr. President, the purpose of the amendment, as I see it, is to discourage Federal help to the school districts; because, under section 410 there is no way to get Federal help, the Department advises me, except under the freedom-of-choice provision. It is the only course permitted by the amendment, and that course is illegal, under many court rulings.

I am willing to yield back the remainder of my time.

Mr. ERVIN. Mr. President, I ask for the yeas and nay.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, I rise in support of the amendment offered by the Senator from Pennsylvania.

The enactment of section 410 of the bill would contravene the constitutional obligation of every school district to provide for public schooling on a nondiscriminatory basis.

In this respect, section 410 goes further than the original Whitten amendments which have been debated here in connection with the Mathias amendment.

It introduces more directly upon the traditional jurisdiction of local school boards and of State legislatures to set educational policy. And the provision would establish, in effect, a statutory right of "freedom of choice" for all parents and students under Federal law.

Mr. President, nearly 2 years ago the Supreme Court ruled, in the case of Green against New Kent County Board of Education, Va., that freedom of choice is not constitutionally permissible unless it achieves an end to illegal segregation in the schools. Moreover, experience with freedom of choice desegregation plans indicates that in most cases such plans are not effective in overcoming discrimination.

Section 410 ignores this experience and the decisions of the Federal courts by attempting to legalize freedom of choice in all situations—regardless of whether it accomplishes equal opportunity for minority students.

In addition, it would appear that section 410 negates and overrides the traditional powers reserved to the States and to local authorities in the field of public education.

For section 410 would deny Federal education funds to school districts which voluntarily sought to desegregate its schools by an assignment plan other than freedom of choice. It would deny to school districts Federal funds if they chose to obey the order of a Federal court to desegregate in a manner contrary to freedom of choice. And it raises the possibility that every single school district that is now desegregating by methods other than freedom of choice would be encouraged to go back on their commitments or otherwise risk a loss of Federal funds.

In short, the enactment of section 410 on the part of Congress would place school districts in a wholly untenable position. Any school desegregation on the part of a school district—whether ordered by the courts, pursuant to State law, or voluntarily undertaken—if it conflicts with freedom of choice, would carry the risk of a termination of Federal funds.

Mr. President, under title VI of the Civil Rights Act of 1964, and under the Constitution, school districts have the affirmative obligation to desegregate in the event of a finding of discrimination.

Section 410 would not make their task any easier. In fact, it can be argued that the provision merely serves to complicate and confuse the legal responsibility which rests with school districts and local authorities. Section 410 does not—and cannot—remove a constitutional obligation; however, it does make the job more difficult for educational officials all across the country who have attempted and are attempting to comply with the requirements of the law.

There is no question but that section 410 would sanction a return to the pattern of separate schools for whites and for Negroes.

Most school districts with which the Government has negotiated meaningful desegregation would be tempted to return to ineffective freedom of choice—which in many instances is merely a euphemism for the dictum "separate but equal." That is what freedom of choice has amounted to in practical terms. It seems to me that, with the enactment of the Civil Rights Act of 1964, the Congress crossed this bridge many years ago.

I therefore urge my colleagues to vote for the pending amendment to strike section 410.

Mr. SCOTT. I yield back the remainder of my time.

Mr. ERVIN. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Pennsylvania. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALLOTT (when his name was called). On this vote I have a pair with the distinguished Senator from Rhode Island (Mr. PASTORE). If he were present and voting, he would vote "yea"; if I were at liberty to vote, I would vote "nay." I withhold my vote.

Mr. FULBRIGHT (when his name was called). On this vote I have a pair with the distinguished Senator from Missouri (Mr. SYMINGTON). If he were present and voting, he would vote "yea"; if I were at liberty to vote, I would vote "nay." I withhold my vote.

Mr. NELSON (when his name was called). On this vote I have a pair with the distinguished Senator from Louisiana (Mr. LONG). If he were present and voting, he would vote "nay"; if I were at liberty to vote, I would vote "yea". I withhold my vote.

The rollcall was concluded.

Mr. KENNEDY. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from Connecticut (Mr. DODD), the Senator from Iowa (Mr. HUGHES), the Senator from Washington (Mr. JACKSON), the Senator from Louisiana (Mr. LONG), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Rhode Island (Mr. PASTORE), the Senator from Missouri (Mr. SYMINGTON), and the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

I further announce that the Senator from Alaska (Mr. GRAVEL) is absent on official business.

I further announce that, if present and voting, the Senator from Iowa (Mr. HUGHES), the Senator from Washington (Mr. JACKSON), the Senator from Rhode Island (Mr. PASTORE), and the Senator from Indiana (Mr. BAYH) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOK), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senators from Illinois (Mr. PERCY and Mr. SMITH), the Senator from Vermont (Mr. PROUTY), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Ohio (Mr. SAXBE) is absent on official business.

If present and voting, the Senator from Kentucky (Mr. COOK) and the Senator from Illinois (Mr. PERCY) would each vote "yea."

On this vote, the Senator from Illinois (Mr. SMITH) is paired with the Senator from South Dakota (Mr. MUNDT). If present and voting, the Senator from Illinois would vote "yea," and the Senator from South Dakota would vote "nay."

The result was announced—yeas 43, nays 32, as follows:

[No. 73 Leg.]

YEAS—43

Aiken	Hart	Mondale
Anderson	Hartke	Muskie
Bellmon	Hatfield	Pearson
Boggs	Inouye	Pell
Brooke	Javits	Proxmire
Burdick	Kennedy	Randolph
Case	Magnuson	Ribicoff
Cooper	Mansfield	Schweiker
Cranston	Mathias	Scott
Dole	McCarthy	Smith, Maine
Eagleton	McGee	Tydings
Fong	McGovern	Williams, N.J.
Goodell	McIntyre	Young, Ohio
Griffin	Metcalf	
Harris	Miller	

NAYS—32

Allen	Ellender	Murphy
Baker	Ervin	Russell
Bennett	Gore	Sparkman
Bible	Gurney	Spong
Byrd, Va.	Hansen	Stennis
Byrd, W. Va.	Holland	Talmadge
Cannon	Hollings	Thurmond
Cotton	Hruska	Tower
Curtis	Jordan, N.C.	Williams, Del.
Dominick	Jordan, Idaho	Young, N. Dak.
Eastland	McClellan	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—3

Allott, against.
Fulbright, against.
Nelson, for.

NOT VOTING—22

Bayh	Jackson	Prouty
Church	Long	Saxbe
Cook	Montoya	Smith, Ill.
Dodd	Moss	Stevens
Fannin	Mundt	Symington
Goldwater	Packwood	Yarborough
Gravel	Pastore	
Hughes	Percy	

So Mr. SCOTT's amendment was agreed to.

Mr. SCOTT. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JAVITS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. SCOTT. Mr. President, may I at this time, yielding time on the bill, ask the majority leader what the further program is.

Mr. MANSFIELD. Mr. President, it is my understanding that there are amendments to be offered by the distinguished Senator from Virginia (Mr. SPONG), the distinguished Senator from Nebraska (Mr. HRUSKA), the distinguished Senator from New York (Mr. JAVITS), and the distinguished Senator from California (Mr. MURPHY).

I would like, with the permission of the two last-named Senators and the manager of the bill, to ask unanimous consent that on the Javits and Murphy amendments there be a time limitation of 20 minutes, the time to be equally divided between the sponsors of the amendments and the manager of the bill.

Mr. SCOTT. Mr. President, 20 minutes on the Javits amendment and 20 minutes on the Murphy amendment.

The PRESIDING OFFICER. Is there objection to a time limitation on the Murphy and Javits amendments? The Chair hears none, and it is so ordered.

Mr. MANSFIELD. Mr. President, it is my understanding on the Spong amendment that there is a 2-hour limitation.

Mr. SPONG. Mr. President, I believe the limitation is 1 hour; 30 minutes to a side. I would certainly hope not to use 2 hours. If I may state what happened on yesterday, the Senator from Montana thought that the Senator from Nebraska (Mr. HRUSKA) might have the same amendment. The effect was that he asked for 2 hours, an hour to the side. I said that I thought that an hour would be agreeable to me.

Mr. SCOTT. Mr. President, I ask that the unanimous-consent agreement previously entered into be modified. If the majority leader has no objection, I would ask him now to pose a modification on the time limitation for the amendment of the distinguished Senator from Virginia.

Mr. MANSFIELD. The minority leader may state it.

Mr. SCOTT. Mr. President, would the Senator from Virginia agree to a modification of the time limitation on his amendment to 1 hour to be equally divided?

Mr. SPONG. That is agreeable.

Mr. SCOTT. I ask unanimous consent that there be a time limitation on the Spong amendment, the time to be equally divided.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. MANSFIELD. Mr. President, has the Chair put the question?

The PRESIDING OFFICER. The unanimous-consent agreement has been agreed to. There will be 20 minutes on the Murphy and the Javits amendments and 1 hour on the Spong amendment, and 2 hours on the Hruska amendment.

Mr. SPONG. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The ASSISTANT LEGISLATIVE CLERK. The Senator from Virginia (Mr. SPONG) proposes an amendment as follows:

On page 28, line 15, after the word "of", strike out "90 per centum of the amounts to which such agencies are entitled pursuant to section 3(a) of said title and".

Mr. SPONG. Mr. President, I offer this amendment on behalf of myself, the Senator from Texas (Mr. YARBOROUGH), the Senator from Colorado (Mr. DOMINICK), the Senator from Rhode Island (Mr. PELL), the Senator from Virginia (Mr. BYRD), and the Senator from Idaho (Mr. JORDAN).

I understand that the hour is late, and I know that there are other amendments to be considered. So I will try, as briefly as possible, to explain the amendment.

The pending amendment would strike language which provides for separate and different appropriations treatment of category "A" and category "B" children under the impacted areas program.

As I am certain all of you know, category "A" children are those whose parents live and work on Federal property, while category "B" children are those whose parents only work on Federal property.

Under the language currently in the bill, category "A" children would be funded at 90 percent of entitlement before any category "B" children are funded. This means that within the appropriation provided by the bill, category "B" children would be funded at about 72 percent of entitlement. Under the amendment adopted yesterday, these percentages would, of course, be reduced, if the President exercised his discretionary reduction authority on the impacted areas program.

The effect of the pending amendment would be to require that category "A" and category "B" pupils be funded at the same percentage of entitlement. Estimates are that the $505 million in the bill for the Public Law 874 program would permit funding at approximately 78 percent of entitlement for both categories.

The pending amendment would permit continuation of the program in the form in which it currently exists. Category "A" and category "B" children have always been treated alike under the program as far as percentage of reimbursement is concerned. Adoption of the amendment would permit them to be treated alike in fiscal 1970.

Provision is made in the law for a distinction between category "A" and category "B" children. Reimbursement for category "B" children is, under the authorization, one-half of the reimbursement for category "A" children. Thus, if category "A" children are reimbursed at $100 each, reimbursement for category "B" children is $50 each. Under existing law and the proposed amendment, the reimbursement would be the same percentage for both categories; that is, approximately 78 percent. Under our hypothetical example, this would mean 78 percent of the $100 for category "A" children and 78 percent of the $50 for category "B" children. The language in the bill would, however, further emphasize the distinction. Under our hypothetical example, reimbursement would be at a rate of 90 percent of the $100 for category "A" children and 72 percent of the $50 for category "B" children. The distinction is thus exaggerated far beyond the intent of Congress in the authorizing legislation.

The language in the committee bill is but another attempt to modify the impacted areas program in the appropriations process. By permitting the language in the bill to stand, we would be shifting the focus of the program. Furthermore, we would be doing so without committee hearing and adequate study of the effects of such a shift. And, we would be doing so late in the school year, without giving local school districts reasonable notice of the change in congressional intent.

Only several weeks ago we had before us the Elementary and Secondary Education Act Amendments. We debated it for days. If a change was to be made in the focus of the program, that was the time to make it. If the purpose and emphasis of the impact program is to be changed, it should be done in an authorization bill, not in the appropriations process.

Recently, the Battelle Memorial Institute released a report carrying various recommendations for modifications in the impact program. The administration, several days ago, sent Congress proposals for changing the impact program as a result of that report. Those proposals went to the Education Subcommittees in the House and Senate, and any change in the program should be considered by those legislative committees.

But, certainly, this is not the place or the time to modify the program. Every year we see the same play repeated. The battle over impact aid is not fought in the legislating bills, but in the appropriation bills, and it is not fought until so late in the year that change would wreak havoc on local school districts.

Perhaps some modifications should be made in the program, but they should not be made in the manner in which they have been attempted. Impact aid provides thousands, and in some cases, millions of dollars for school districts. To cut this aid or redistribute it in the midst of a school year is a ridiculous and inefficient exercise of power. It makes orderly planning and efficient management impossible on the local level. It makes us in the Federal Government look as though we do not understand basic concepts of business and administration.

The impasse over enactment of this appropriation bill has already caused severe financial problems for a number of school districts. I do not believe we should compound those problems by shifting the focus of programs this late in the school year. I believe it would be irresponsible of us to do so.

This amendment would help us to make the best of a situation which has almost reached the absurd. It would help permit school districts which have already made commitments to spend anticipated funds this year to arrange their finances to comply with the budget restraints which have been imposed. And, hopefully, it would permit us to turn our thoughts away from this year, in which orderly planning and operation is beyond hope, toward next year, where there is still a chance for efficient and effective operations of our school finances.

I would like to note that the able chairman of the Senate Labor and Public Welfare Committee (Mr. YARBOROUGH) is a cosponsor of this amendment. I am certain that he would have spoken in favor of it had he not had to be in Texas today on business. Also, the able chairman of the Education subcommittee, Senator PELL, is a cosponsor.

Mr. President, I ask unanimous consent that I may add the name of the Senator from Nevada (Mr. CANNON) as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPONG. Mr. President, I yield now to the chairman of the Subcommittee on Education, the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. PELL. Mr. President, I rise to support the motion of Senator SPONG, which would delete from the pending measure that provision which would provide for preferential funding in the impacted aid program or "A" children over "B" children.

The question of impacted aid is one which is periodically discussed in the Senate, either attacked or defended, but in the end it seems to go merrily along.

Upon taking office, the new administration spoke of its desire to fund the "A" children and not the "B" children in this program. Indeed in our first hearings in the Education Subcommittee last year, which while not on this specific subject, saw mention made of the administration's proposal to shift the funding and there was general opposition to it.

A year and a quarter has passed, we enacted one appropriations bill and there was no mention of preferential funding. Now, we have before us a measure which would give preference to the "A" children and, in essence, would allow the President not to fund the "B" children when one considers the 2-percent cut the Senate approved yesterday.

There is also a certain equity that we should keep in mind when discussing a bill for the fiscal year which started last July. The schools have been operating for 7 months at approximately the 1969 level of appropriations. To suddenly change the method of payment of the impacted aid program, I believe would cause a great financial hardship on many of the school districts. And here it may be wise for the Senate to consider in actual numbers just what we are speaking of. To use fiscal 1969 as an example, the total appropriation for Public Law 874 amounted to $462,848,135, this breaks down to $115,523,133 for 348,703 "A" children and $347,325,001 for 2,221,876 "B" children with no preference as to which category gets funded first.

In my State of Rhode Island there are approximately 3,036 "A" students and 11,050 "B" students, the funds break down to $1,219,225 for "A" and $2,293,-919 for "B" a little higher ratio of "A" students than reflected in the national picture. Nevertheless, there would be a great hardship suffered by local education agencies if this preferential funding were adopted. I ask that at this point in the RECORD a table of Public Law 874 payments for each State be printed.

There being no objection, the tables were ordered to be printed in the RECORD, as follows:

1969 PUBLIC LAW 81-874 APPROPRIATIONS

CHILDREN AND PAYMENTS UNDER PUBLIC LAW 874

State	District	A children	B children	A amount	B amount	A plus B amount	District schools
Alabama	01	234	5,179	$59,853	$662,342	$722,195	4
Do	02	516	7,543	131,982	964,674	1,096,657	6
Do	03	730	10,468	186,719	1,338,753	1,525,472	12
Do	04	329	7,634	84,152	976,312	1,060,464	12
Do	05	25	1,035	6,395	132,366	138,761	3
Do	07		2,126		271,894	271,894	3
Do	08	802	23,784	205,136	3,041,736	3,246,871	15
Do	97		1,236		158,072	158,072	2
Do	All	2,636	59,005	674,236	7,546,149	8,220,386	57
Alaska	99	15,240	14,304	10,386,230	2,805,128	13,191,358	23
Do	All	15,240	14,304	10,386,230	2,804,128	13,191,358	23
Arizona	01	808	4,463	253,217	644,748	897,965	12
Do	02	5,144	15,968	1,465,351	2,563,003	4,028,355	47
Do	03	10,354	3,566	2,769,995	510,154	3,280,149	52
Do	78	1,495	3,280	386,443	497,190	883,632	18
Do	All	17,801	27,277	4,875,006	4,215,095	9,090,102	129
Arkansas	01	1,029	689	263,198	88,116	351,314	2
Do	02	1,804	7,579	461,427	969,278	1,430,705	13
Do	03	20	2,439	5,116	311,924	317,039	28
Do	04	45	4,049	11,510	517,827	529,337	14
Do	All	2,898	14,756	741,250	1,887,145	2,628,395	57
California	01	2,644	10,385	832,685	1,701,343	2,534,028	31
Do	02	1,145	5,538	398,880	943,519	1,342,399	63
Do	03	2,716	31,471	824,451	5,138,340	5,962,790	15
Do	04	7,735	18,794	2,449,964	3,007,474	5,457,438	21
Do	07		1,857		292,505	292,505	3
Do	08	1,494	4,058	471,242	578,963	1,150,205	4
Do	09	32	7,090	10,112	1,164,858	1,174,970	12
Do	10	152	8,759	45,115	1,430,040	1,475,155	16
Do	11	4	4,437	1,470	698,488	699,957	12
Do	12	5,454	9,406	1,723,471	1,513,311	3,236,782	18
Do	13	6,528	24,311	2,045,580	3,955,919	6,001,499	34
Do	14	229	10,885	72,142	1,749,706	1,821,848	14
Do	15	87	7,988	27,408	1,300,464	1,327,871	18
Do	16	1,144	4,707	350,812	757,200	1,108,012	16
Do	17		370		51,393	51,393	1
Do	18	8,516	3,767	2,721,284	605,988	3,327,271	20
Do	19		1,773		279,274	279,274	2
Do	20		467		73,560	73,560	1
Do	23		3,836		611,941	611,941	5
Do	24		2,653		417,887	417,887	3
Do	25	6	1,613	2,595	289,685	292,280	5
Do	27	66	8,025	22,002	1,359,061	1,381,063	11
Do	28	8	2,238	2,520	361,100	363,621	6
Do	31	2	396	556	80,573	81,128	2
Do	32	1,616	7,342	509,088	1,156,475	1,665,564	1
Do	33	3,976	21,007	1,236,558	3,363,425	4,599,982	28
Do	34		9,559		1,482,427	1,482,427	13
Do	35	4,706	20,846	1,425,672	3,621,179	5,046,852	40
Do	36	686	4,778	215,813	718,868	934,681	5
Do	37	41	18,898	13,069	2,971,763	2,985,832	7
Do	38	1,829	8,862	574,111	1,412,858	1,986,969	19
Do	60	7	48	3,142	10,773	13,915	1
Do	62	1,175	22,598	37,060	3,559,524	3,929,684	1
Do	64		2,466		388,432	388,432	2
Do	81	2,034	6,950	640,771	1,094,729	1,735,500	1
Do	83		94		13,057	13,057	1
Do	84	5,578	26,430	1,760,073	4,163,121	5,923,194	1

State	District	A children	B children	A amount	B amount	A plus B amount	District schools
California	85		2,354		$370,790	$370,790	1
Do	87	19	601	$5,986	94,667	100,652	1
Do	90		301		41,809	41,809	1
Do	92		314		43,615	43,615	1
Do	94		2,000		315,030	315,030	1
Do	95	3	7,975	945	1,256,182	1,257,127	2
Do	96	162	7,999	51,035	1,259,962	1,310,997	1
Do	All	59,803	346,246	18,809,711	55,801,277	74,610,988	46
Colorado	02	317	19,326	116,287	3,847,371	3,963,658	14
Do	03	4,669	29,308	1,902,913	5,662,301	6,565,214	28
Do	04	931	5,854	366,115	1,070,934	1,437,049	31
Do	All	5,917	54,488	2,385,314	10,580,607	12,965,921	73
Connecticut	01		368		78,890	78,890	2
Do	02	2,515	5,354	1,116,319	1,007,239	2,123,558	23
Do	03	41	2,444	14,476	482,188	496,663	4
Do	04		989		169,361	169,361	1
Do	05		1,078		199,967	199,967	4
Do	06		1,348		284,998	284,998	6
Do	All	2,556	11,581	1,130,794	2,222,643	3,353,437	40
Delaware	99	25	4,406	7,874	693,857	701,731	11
Do	All	25	4,406	7,374	693,857	701,731	11
District of Columbia	99	973	37,321	299,217	5,738,477	6,037,694	1
Do	All	973	37,321	299,217	5,738,477	6,037,694	1
Florida	01	3,764	25,797	962,856	3,299,178	4,261,934	6
Do	02	256	4,054	65,480	518,466	583,946	5
Do	02	1,227	12,471	313,842	1,594,916	1,908,758	1
Do	04	10	4,618	2,558	598,653	601,211	3
Do	05	3,055	32,912	781,408	4,209,116	4,990,524	2
Do	06	982	5,084	251,176	650,193	910,369	1
Do	08	5	3,876	1,279	495,702	496,981	1
Do	09	96	81	24,555	10,359	34,914	2
Do	10		501		64,073	64,073	1
Do	12	1,944	1,939	497,236	247,979	745,214	1
Do	82	1,664	6,521	425,618	833,971	1,259,589	1
Do	All	13,003	97,917	3,325,907	12,522,605	15,848,512	24
Georgia	01	659	5,140	168,559	657,355	825,914	8
Do	02	1,000	3,773	255,780	482,529	738,309	6
Do	03	622	24,521	159,095	3,135,991	3,295,086	13
Do	04		3,995		510,921	510,921	2
Do	06	178	9,190	45,529	1,175,309	1,220,838	6
Do	07	33	15,778	8,441	2,017,848	2,026,289	11
Do	08	575	4,257	147,074	544,428	691,501	10
Do	09		1,211		154,875	154,875	4
Do	10	468	12,068	119,705	1,543,377	1,663,082	6
Do	75	117	9,057	29,926	1,158,300	1,188,226	2
Do	All	3,652	88,990	934,109	11,380,931	12,315,040	68
Hawaii	99	15,964	34,788	4,296,232	4,681,073	8,977,305	1
Do	All	15,964	34,788	4,296,232	4,681,073	8,977,305	1
Idaho	01	384	5,272	149,342	808,391	957,733	35
Do	02	2,026	8,335	640,857	1,119,846	1,760,703	23
Do	All	2,410	13,607	790,199	1,928,237	2,718,436	58
Illinois	04		448		95,627	95,627	4
Do	06	5	258	2,038	52,589	54,628	1
Do	10	4	280	3,017	105,591	108,608	1
Do	12	2,931	5,200	1,424,337	1,217,513	2,641,850	30
Do	13	339	13,904	171,280	2,925,714	3,096,993	3
Do	14	73	5,590	27,503	1,207,643	1,235,146	31
Do	15		568		89,183	89,183	8
Do	16	34	683	11,894	107,826	119,721	5
Do	17	9	2,401	2,546	445,073	447,620	19
Do	18	20	3	5,659	424	6,083	1
Do	19	11	2,968	3,779	527,299	531,078	13
Do	20		158		33,783	33,783	3
Do	21	50	1,293	14,147	184,188	198,334	11
Do	22	2,418	3,329	1,002,278	706,337	1,708,616	9
Do	23		823		133,700	133,700	9
Do	24	1,837	7,481	632,036	1,251,141	1,883,176	31
Do	58		206		29,142	29,142	3
Do	All	7,731	45,593	3,300,514	9,112,774	12,413,288	182
Indiana	2		162		24,439	24,439	1
Do	5	1,494	1,953	563,626	309,658	873,283	6
Do	06	9	1,700	2,309	218,042	220,351	16
Do	07	5	2,202	1,283	291,704	292,987	18
Do	08	157	2,754	40,274	353,228	393,502	13
Do	09	87	7,741	24,339	1,029,123	1,053,463	44
Do	10		301		39,631	39,631	3
Do	11	342	6,531	105,525	1,252,243	1,357,768	5
Do	All	2,094	23,344	737,355	3,518,067	4,255,422	106
Iowa	10	80	4,637	32,682	947,177	979,859	16
Do	02	4	97	1,634	19,814	21,448	2
Do	03	36	54	14,707	11,030	25,737	1
Do	04	62	3,058	25,329	624,642	649,971	9
Do	05		1,612		315,680	315,680	10
Do	06	396	938	161,778	191,601	353,378	3
Do	07		909		185,677	185,677	2
Do	All	578	11,305	236,130	2,295,621	2,531,752	43
Kansas	01	24	272	7,208	40,845	48,053	7
Do	02	5,705	8,774	1,732,354	1,326,576	3,058,930	29
Do	03	140	6,814	42,046	1,023,224	1,065,271	23
Do	04	800	14,575	240,264	2,188,655	2,428,919	14
Do	05	1,483	4,930	445,389	140,314	1,185,103	41
Do	All	8,152	35,365	2,467,261	5,319,614	7,786,875	114
Kentucky	01	126	4,855	32,228	820,906	653,134	17
Do	02	24	5,876	6,139	751,482	757,620	12
Do	03	13	11,516	3,325	1,472,781	1,476,106	3
Do	04		87		11,126	11,126	2
Do	05	1	826	256	105,637	105,893	6
Do	06	42	4,562	10,743	583,434	594,177	12
Do	07	7	31	1,790	3,965	5,755	1
Do	12		256		32,740	32,740	1
Do	All	213	28,009	54,481	3,582,071	3,636,552	54
Louisiana	01		520		66,503	66,503	1
Do	02		1,765		225,726	225,726	1
Do	04	1,329	6,433	339,932	822,716	1,162,648	2
Do	06	17	2,446	4,348	32,819	317,167	2
Do	08	246	7,156	62,922	915,181	978,103	4
Do	791	123	3,718	31,461	475,495	506,956	1
Do	All	1,715	22,038	438,663	2,818,440	3,257,103	11

1969 PUBLIC LAW 81-874 APPROPRIATIONS—Continued

CHILDREN AND PAYMENTS UNDER PUBLIC LAW 874—Continued

State	District	A children	B children	A amount	B amount	A plus B amount	District schools
Maine	01	1,061	5,468	$367,113	$885,183	$1,252,296	36
Do	02	3,537	2,927	1,295,046	440,073	1,735,119	38
Do	All	4,598	8,395	1,662,159	1,325,256	2,987,415	74
Maryland	01	1,334	5,994	450,895	1,010,938	1,461,833	4
Do	02	1,531	7,269	539,586	1,280,943	1,820,529	1
Do	05	1,418	49,850	499,760	8,784,567	9,284,327	2
Do	06	619	6,152	202,213	998,669	1,200,882	4
Do	08	169	32,368	59,562	5,703,889	5,763,451	1
Do	76		1,905		335,699	335,699	1
Do	77	111	12,814	38,851	2,119,604	2,158,455	2
Do	78	2,769	11,223	753,279	1,526,552	2,279,831	1
Do	All	7,951	127,575	2,544,146	21,760,861	24,305,007	16
Massachusetts	01	15	3,916	6,914	943,733	950,647	24
Do	02	2,239	4,139	1,056,379	993,977	2,050,356	9
Do	03	2,007	3,456	1,137,180	350,427	1,987,607	33
Do	04	15	2,992	9,888	780,145	790,033	14
Do	05	216	6,894	149,496	1,778,118	1,927,614	21
Do	06	36	2,989	18,355	711,927	730,282	22
Do	07	17	3,793	8,219	994,250	1,002,469	11
Do	08	58	942	38,741	254,025	292,765	3
Do	10	63	1,828	26,479	473,661	505,140	10
Do	11	227	3,645	114,821	815,910	930,731	11
Do	12	2,121	5,687	1,209,820	1,428,076	2,637,895	40
Do	61	13	3,069	6,778	800,012	806,789	1
Do	74		16		6,400	6,400	1
Do	75	2	80	1,598	31,970	33,568	1
Do	All	7,029	43,446	3,784,668	10,867,629	14,652,297	201
Michigan	02	27	488	7,249	65,512	72,761	2
Do	03	382	3,090	102,563	414,817	517,380	7
Do	08	12	251	3,222	33,696	33,917	4
Do	09	17	345	4,564	46,315	50,879	3
Do	10	1,794	1,019	481,671	136,796	618,467	3
Do	11	4,037	2,905	1,083,894	389,982	1,473,876	24
Do	12	1,475	3,340	396,023	448,378	344,401	11
Do	15		380		51,013	51,013	2
Do	16	33	44	8,860	5,907	14,767	1
Do	52		4,832		648,672	648,672	1
Do	All	7,777	16,694	2,088,047	2,241,086	4,329,133	58
Minnesota	01		616		87,835	87,835	4
Do	02	24	15	6,844	2,139	8,983	1
Do	03	121	4,073	34,507	580,769	615,276	9
Do	04		4,460		635,951	635,951	5
Do	05		2,520		359,327	359,327	1
Do	06	98	30	27,948	4,278	32,225	2
Do	07	1,072	963	305,713	137,314	443,027	18
Do	08	950	2,391	270,921	340,933	611,854	15
Do	All	2,265	15,068	645,933	2,148,546	2,794,479	55
Mississippi	01	910	976	232,760	124,821	357,580	2
Do	03	8	757	2,046	96,813	98,859	1
Do	04	269	623	68,805	79,675	148,480	2
Do	05	1,993	11,282	509,770	1,442,855	1,952,625	13
Do	All	3,180	13,638	813,380	1,744,164	2,557,544	18
Missouri	01		937		140,414	140,414	3
Do	02	30	5,314	8,659	729,293	305,952	10
Do	03	89	418	26,751	62,819	89,570	1
Do	04	2,440	17,917	733,391	2,840,484	3,573,875	40
Do	05		656		98,587	98,587	1
Do	06	2	2,525	601	378,731	379,332	14
Do	07	11	1,692	2,814	216,390	219,203	17
Do	08	2,891	4,657	868,366	625,414	1,493,779	29
Do	09	23	1,376	5,883	199,559	205,442	11
Do	10	11	35	2,814	4,476	7,290	1
Do	11		101		12,917	12,917	1
Do	78	25	4,680	4,509	846,921	851,430	2
Do	All	5,512	40,308	1,653,786	6,224,005	7,877,791	130
Montana	01	1,695	4,577	874,010	791,861	1,665,872	64
Do	02	6,079	5,353	2,100,117	797,953	2,898,070	46
Do	All	7,774	9,930	2,974,128	1,589,814	4,563,942	110
Nebraska	01	408	1,336	162,543	266,125	428,668	8
Do	02	3,523	7,420	1,403,528	1,478,027	2,881,555	8
Do	03	354	3,147	136,467	626,867	763,333	34
Do	All	4,285	11,903	1,702,538	2,371,018	4,073,556	50
Nevada	99	3,841	17,336	1,055,276	2,381,446	3,436,723	13
Do	All	3,841	17,336	1,055,276	2,381,446	3,436,723	13
New Hampshire	01	1,560	5,783	678,110	1,211,364	1,889,475	35
Do	02	5	685	2,225	161,461	163,685	7
Do	03		68		10,180	10,180	1
Do	13		49		9,786	9,786	1
Do	All	1,565	6,585	680,335	1,392,790	2,073,125	44
New Jersey	01	35	5,700	14,025	1,375,228	1,389,253	44
Do	02	30	2,185	12,055	504,330	516,384	20
Do	03	1,676	11,050	740,228	2,686,546	3,426,774	49
Do	04	1,970	2,721	633,966	636,310	1,270,276	19
Do	05	124	3,100	55,063	752,677	807,740	18
Do	06	3,214	9,282	1,651,918	2,268,089	3,920,006	37
Do	13	125	305	62,073	75,728	137,801	1
Do	51		759		188,452	188,452	1
Do	All	7,174	35,102	3,169,327	8,487,360	11,656,686	189
New Mexico	01	5,502	24,024	1,407,302	3,072,429	4,479,731	12
Do	02	3,719	10,529	951,246	1,346,554	2,297,800	13
Do	99	9,103	6,620	2,328,365	846,632	3,174,997	14
Do	All	18,324	41,173	4,686,913	5,265,615	9,952,528	39
New York	01	542	9,491	370,783	2,161,843	2,532,626	44
Do	02		1,838		428,365	428,365	9
Do	03		603		144,031	144,031	2
Do	04	791	381	374,002	89,951	463,953	2
Do	05		245		57,851	57,851	1
Do	25	3	143	5,617	50,484	56,100	2
Do	27	1,059	3,273	441,285	681,930	1,123,215	6
Do	28	3	301	1,250	62,713	63,963	3
Do	29	101	4,815	42,289	1,077,560	1,119,849	20
Do	30	1,717	2,081	715,474	433,576	1,149,050	19
Do	31	163	1,072	67,922	233,351	291,273	7
Do	32	1,213	5,406	505,457	1,126,340	1,631,797	16

State	District	A children	B children	A amount	B amount	A plus B amount	District schools
New York	33		1,710		$356,279	$356,279	6
Do	34	136	735	$56,671	153,137	209,808	2
Do	35	155	1,467	64,589	305,649	370,238	10
Do	38		497		103,550	103,550	5
Do	40	498	399	207,517	83,132	290,648	3
Do	54		1,363		283,981	283,981	1
Do	69	1,250	16,800	726,538	4,882,332	5,608,870	1
Do	79		528		150,690	150,690	2
Do	All	7,639	53,148	3,579,393	12,856,745	16,436,138	161
North Carolina	01	1,858	5,326	475,239	681,142	1,156,381	10
Do	03	1,743	12,708	445,825	1,625,226	2,071,051	8
Do	04	5	350	1,279	44,762	46,040	1
Do	07	494	18,862	126,355	2,412,261	2,538,617	7
Do	09	2	771	512	98,603	99,115	2
Do	11	294	982	75,199	125,588	200,787	4
Do	All	4,396	38,999	1,124,409	4,987,582	6,111,991	32
North Dakota	01	3,221	1,605	969,682	241,231	1,210,913	20
Do	02	3,415	1,237	1,050,315	187,163	1,237,478	24
Do	All	6,636	2,842	2,019,997	428,394	2,448,390	44
Do	All	6,636	2,843	2,019,997	428,334	2,448,380	44
Ohio	01		63		12,163	12,163	1
Do	02		949		147,112	147,112	5
Do	03	1,830	10,973	468,077	1,829,256	2,297,333	12
Do	04		310		43,203	43,203	2
Do	05		217		37,594	37,594	2
Do	06	40	3,286	10,231	495,328	505,559	23
Do	07	162	12,988	41,346	1,809,638	1,851,074	20
Do	08		235		30,054	30,054	2
Do	09		490		94,602	94,602	1
Do	10	3	1,282	767	183,573	184,340	11
Do	12	10	2,908	2,558	371,904	374,462	5
Do	13		1,060		176,558	176,558	9
Do	14	24	799	6,139	134,576	140,715	4
Do	15		672		119,312	119,312	3
Do	17		3,084		441,813	441,813	11
Do	23		3,767		727,276	727,276	10
Do	24		2,685		454,508	454,508	6
Do	59		1,655		319,523	319,523	1
Do	68	1,368	11,219	355,512	2,092,023	2,447,535	7
Do	79		499		96,339	96,339	2
Do	All	3,437	59,141	884,721	9,616,354	10,501,075	139
Oklahoma	01	500	7,426	163,494	1,230,050	1,393,543	32
Do	02	1,810	4,419	468,678	575,812	1,004,490	88
Do	03	209	3,829	54,985	493,891	548,876	56
Do	04	710	4,636	195,361	607,937	803,299	73
Do	05	208	18,259	65,186	2,643,224	2,708,410	32
Do	06	6,180	14,820	1,645,180	1,961,670	3,606,850	69
Do	75	408	8,867	138,418	1,504,109	1,642,527	1
Do	All	10,025	62,256	2,731,302	9,016,693	11,747,995	351
Oregon	01	401	566	156,492	114,334	270,826	7
Do	02	634	4,016	263,862	816,998	1,080,860	40
Do	03	40	2,796	27,332	545,877	573,209	4
Do	04	185	2,505	80,215	520,860	601,076	17
Do	All	1,260	9,883	527,901	1,998,069	2,525,970	68
Pennsylvania	06		340		45,693	45,693	2
Do	07		1,866		394,277	394,277	11
Do	08	13	2,554	3,673	441,134	444,807	6
Do	09		967		168,504	168,504	3
Do	10		1,893		254,400	254,400	8
Do	11		1,230		173,274	173,274	6
Do	12		5,330		716,299	716,299	12
Do	13		947		239,432	239,432	4
Do	15	131	332	58,346	73,935	132,281	1
Do	16	63	2,557	16,933	365,500	382,433	12
Do	17		1,856		267,810	267,810	4
Do	18	53	98	21,289	19,774	41,163	1
Do	19	124	5,283	33,246	739,706	773,132	16
Do	23						1
Do	26		110		17,365	17,365	1
Do	27		745		123,960	123,960	4
Do	57		2,720		491,811	491,811	4
Do	63		348		63,045	63,045	1
Do	66	566	15,681	205,611	2,848,218	3,053,829	1
Do	67	80	648	24,112	94,473	118,585	4
Do	All	1,030	45,505	363,490	7,538,610	7,902,101	102
Rhode Island	01	1,823	4,982	723,673	1,053,742	1,777,416	8
Do	02	1,212	5,193	495,104	1,044,242	1,539,346	15
Do	79	1	875	448	195,934	196,382	1
Do	All	3,036	11,050	1,219,225	2,293,919	3,513,144	24
South Carolina	01	3,984	24,218	1,019,028	3,097,240	4,116,268	16
Do	02	233	15,019	59,597	1,920,780	1,980,377	13
Do	03	39	379	9,975	48,470	58,446	3
Do	04		638		81,594	81,594	1
Do	05	998	1,605	255,268	205,263	460,532	1
Do	06	123	790	31,461	101,033	132,494	1
Do	All	5,377	42,649	1,375,329	5,454,381	6,829,710	35
South Dakota	01	480	1,688	165,965	291,821	457,786	21
Do	02	5,556	4,960	1,921,043	809,952	2,730,995	47
Do	All	6,036	6,378	2,087,007	1,101,774	3,188,781	68
Tennessee	01	36	4,359	9,208	557,473	566,681	8
Do	02	25	8,814	6,395	1,127,222	1,133,617	9
Do	03	5	3,532	1,279	451,707	452,986	10
Do	04	896	8,767	229,179	1,121,212	1,350,391	16
Do	05		2,522		322,539	322,539	1
Do	06		5,420		693,164	693,164	7
Do	07		1,464		187,231	187,231	9
Do	08	36	2,105	9,208	269,208	278,417	6
Do	09	1,029	3,513	263,198	449,278	712,475	1
Do	96		6,000		767,340	767,340	1
Do	All	2,027	46,496	518,466	5,946,373	6,464,840	68

1969 PUBLIC LAW 81-874 APPROPRIATIONS—Continued

CHILDREN AND PAYMENTS UNDER PUBLIC LAW 874—Continued

State	District	A children	B children	A amount	B amount	A plus B amount	District schools
Texas	01	84	10,613	$21,486	$1,357,297	$1,378,782	36
Do	02		261		33,379	33,379	4
Do	03	5	2,107	1,279	269,464	270,743	2
Do	04	332	3,069	84,919	392,494	477,413	14
Do	05	11	1,732	2,814	221,505	224,319	6
Do	06		1,116		142,850	142,850	13
Do	07						2
Do	08	20	2,916	5,116	372,927	378,043	3
Do	09	4	4,709	1,023	602,234	603,257	7
Do	10	877	4,721	224,319	603,769	828,088	10
Do	11	3,610	13,446	923,366	1,719,609	2,642,975	37
Do	12	986	24,629	252,199	3,149,803	3,402,002	16
Do	13	1,417	7,423	262,440	949,327	1,311,768	20
Do	14	325	6,233	83,129	797,138	880,267	5
Do	15	251	1,497	64,201	191,451	255,652	5
Do	16	3,339	20,440	861,348	2,604,980	3,466,328	12
Do	17	1,945	7,916	497,492	1,012,377	1,509,869	24
Do	18	682	2,905	174,710	371,520	546,230	8
Do	19	403	1,730	103,079	21,250	324,329	4
Do	20	838	45,142	214,344	5,773,210	5,987,554	11
Do	21	691	4,756	176,744	608,245	784,989	13
Do	22		659		84,280	84,280	2
Do	23	296	7,158	75,711	915,437	991,148	18
Do	53	16	3,300	4,092	422,037	426,129	1
Do	56	2	2,754	512	352,209	352,721	1
Do	86	3,621	988	1,712,733	146,448	1,859,181	4
Do	All	19,755	182,220	5,847,054	23,315,242	29,162,296	278
Utah	01	2,329	33,617	595,712	4,299,278	4,894,990	18
Do	02	788	13,114	201,555	1,677,149	1,878,704	10
Do	All	3,117	46,731	797,266	5,976,428	6,773,694	28
Vermont	99	11	626	3,219	98,558	101,778	14
Do	All	11	626	3,219	98,558	101,778	14
Virginia	01	4,791	38,849	1,332,491	5,126,733	6,459,225	10
Do	02	3,269	24,985	1,017,709	3,714,117	4,731,826	3
Do	03		4,499		662,101	662,101	3
Do	04	1,478	13,776	378,043	1,761,813	2,139,855	9
Do	05	4	445	1,023	56,911	57,934	1
Do	06	31	3,838	7,929	527,049	534,978	6
Do	07		133		17,009	17,009	1
Do	08	207	14,590	55,183	2,215,710	2,270,893	12
Do	09		3,021		386,356	386,356	7
Do	10	739	64,964	291,721	13,006,663	13,297,934	5
Do	All	10,519	169,100	3,083,650	27,474,462	30,558,111	57
Washington	01	190	6,132	53,916	870,039	923,955	6
Do	02	2,162	7,768	614,319	1,103,174	1,717,493	30
Do	03	367	4,538	119,988	648,311	768,299	32
Do	04	1,634	10,466	464,287	1,502,354	1,966,641	46
Do	05	2,575	4,305	734,043	612,331	1,346,375	32
Do	06	5,564	26,944	1,604,436	3,822,950	5,427,385	18
Do	07	174	3,877	49,376	550,088	599,464	11
Do	All	12,756	64,030	3,640,365	9,109,246	12,749,612	175
West Virginia	02	50	1,770	12,789	226,365	239,154	6
Do	03		590		75,455	75,455	1
Do	04	1	714	256	91,313	91,569	1
Do	All	51	3,074	13,045	393,134	406,179	8
Wisconsin	02	555	2,187	160,020	402,414	562,435	8
Do	03	80	4,014	29,493	740,205	770,148	21
Do	07	124	188	46,412	35,183	81,595	5
Do	08	29	522	10,854	97,790	108,544	3
Do	10	373	521	144,303	101,395	245,698	9
Do	55	41	2,374	15,346	444,282	459,628	1
Do	All	1,202	9,806	406,879	1,821,169	2,228,048	47
Wyoming	99	2,113	4,142	1,016,467	641,865	1,658,333	24
Do	All	2,113	4,142	1,016,467	641,865	1,658,333	24
Guam	99	3,647	5,977	932,830	764,399	1,697,228	1
Do	All	3,647	5,977	932,830	764,399	1,697,228	1
Virgin Islands	99		330		42,204	42,204	1
Do	All		330		42,204	42,204	1
Total		348,703	2,221,876	115,523,133	347,325,001	462,848,135	4,285

Mr. PELL. The impacted aid program is one which I believe should be discussed in depth in this session of the Congress. Our Education Subcommittee could not do so in its preparation for the ESEA bill passed last week since the material needed was not at hand. In turn, the administration was not prepared since it was awaiting the report being put together by the Battelle Memorial Institute. The report is here and I understand that the administration is preparing recommendations on impacted aid. As chairman of the Education Subcommittee of the Committee on Labor and Public Welfare I believe our subcommittee will conduct hearings on this subject before the end of the session. I maintain, however, that changing the method of allocation in an appropriations bill is not the way to accomplish an end which may be equitable and for this reason I support the recommendation of the junior Senator from Virginia.

Mr. SPONG. Mr. President, I thank the Senator.

Mr. BYRD of Virginia. Mr. President, will the Senator yield?

Mr. SPONG. I yield.

Mr. BYRD of Virginia. I wish to ask the Senator this question. This amendment does not increase the total amount of dollars going to the impacted aid program. Is that correct?

Mr. SPONG. The Senator is correct. It does not.

Mr. BYRD of Virginia. I am happy to support the amendment of the Senator from Virginia and I commend him for the introduction of the amendment. I am glad to be a cosponsor.

Mr. SPONG. I thank the Senator.

Mr. DOMINICK. Mr. President, will the Senator yield?

Mr. SPONG. I yield to the Senator from Colorado.

Mr. DOMINICK. Mr. President, I wish to congratulate the distinguished Senator from Virginia for offering the amendment, and I am happy to be a cosponsor.

To put the matter in a nutshell, if the amendment were agreed to, it would neither increase nor decrease the amount of money; it would leave the total amount of money as it was before. We would be in the same position we were before.

Since I have been in the Senate, every single administration has always come before the legislative committee and said, "We are going to change the impacted area fund." Up to date, the committee held relatively firm and we did not do it; we did not do it in the next bill, nor did we do it in the original appropriation bill.

The House of Representatives had an opportunity to make a point of order on this bill, but, unfortunately, it was forgotten when the appropriations bill came up. They simply forgot to make the point of order. We cannot make the point of order on it here in the Senate.

Mr. President, I think this will take care of the situation and put the matter back where it is to permit operation for the remaining portion of the school year pending a future revision of the impacted area aid; and we can proceed on the program we have had to date.

Mr. MURPHY. Mr. President, will the Senator yield?

Mr. SPONG. I yield.

Mr. MURPHY. Mr. President, I wish to join my distinguished colleague, the Senator from Colorado, and congratulate the Senator from Virginia for offering the amendment. The amendment seems eminently fair.

School areas that have depended on these funds have made their plans. The school year is more than half over and I think it would be unfortunate to change the rules in the middle of the game. If the rules are to be changed it should be done after hearings in committee; and it should not be done on the floor of this Chamber.

I join my colleague in recommending that the Senate agree to the amendment.

Mr. SPONG. I thank the Senator.

Mr. ALLOTT. Mr. President, will the Senator yield?

Mr. SPONG. I yield.

Mr. ALLOTT. Mr. President, I support the amendment of the Senator from Virginia. I wish to make two very short points. First, of course, many school districts have already started on their fiscal year; many of them started January 1. Therefore, in rewriting the formula in this instance we would do great damage to them if we were to cut out funds from the impacted aid area. I certainly hope this will not be changed.

We have discussed this subject very much on the floor of the Senate in the last few days. I hope the legislative committee takes up this matter, but I do not think this is the proper time, with 8 months of the fiscal year gone and, as the Senator said, 6 or 7 months of the school. In many instances, 2 months of the fiscal year of some of our school districts has passed. This would be the wrong time and wrong vehicle to change this program.

Mr. SPONG. I thank the Senator.

Mr. President, I ask that the name of the Senator from Maryland (Mr. TYDINGS) be added as a cosponsor of the amendment.

The PRESIDING OFFICER (Mr. BYRD of West Virginia in the chair). Without objection, it is so ordered.

Mr. MAGNUSON. Mr. President, I yield myself 2 minutes.

I have no recommendation whatever from the committee to accept this amendment. I wish to point out, however, that this language is legislation on an appropriation bill.

If someone had made a point of order in the House of Representatives it would have been knocked out. However, inasmuch as no one did that in the House of Representatives it became part of the House bill and nothing was said about the point of order.

Frankly, this language was not discussed, that I recall, in the subcommittee at all. There may have been some passing references to it, to the effect that there was new language in the bill, but that would not be unusual because, as Senators know, we met quite hurriedly, immediately after the House passed the bill, and we had more problems in the money part of the bill and other important policy measures in the bill. We wanted to get it moving and get it to the Senate as soon as possible.

I do not know just what this does. It is legislation and it does change the formula—whether it changes the formula in the right way or the wrong way I am not too familiar.

I understand that there is, as all of us know, a great deal of sentiment. The President sent up a message asking that the committee look at this. To strike out this language would leave us where we are. There is a great deal of merit to the statement of the Senator from Virginia that the school districts have relied upon this formula. I personally have no objection to the amendment, but I want to assure the Senator I cannot speak for members of the committee because it is in the bill.

Mr. President, I yield such time to the Senator from New Hampshire as he deems desirable.

Mr. COTTON. Mr. President, I merely want to say—and I guess I have already said it, but there were not many Senators on the floor at the time—that I do not like to be in the position of one who had an amendment which was accepted and then wants all other amendments rejected. However, earlier in the afternoon I made the observation that it seems too bad that we cannot get this HEW bill through conference, to the President, get it signed, and be doing business on an appropriation bill and not be fooling around with not only continuing resolutions but also resolutions that are distorted and different from any continuing resolutions we have ever had before.

Mr. President, I do not recall how strongly members of the Committee on Appropriations of the House of Representatives, who apparently wrote this provision in the bill, feel about it. As one who along with the distinguished chairman, the Senator from Washington, has worked long and hard, I wish to say that in the last week this Senator has struggled as he never struggled before in all the time he has been in the Senate to try to get a bill that we could get to the President, have signed, and go to work on the fiscal 1971 appropriation. I felt if we started to hang amendments on the bill—and I said this before we passed the first amendment this afternoon—we are bound to run into difficulties when we go into conference with conferees from the House of Representatives. There is no reason why the Senate should change what the Senate believes to be right because they do not want to brave a conference. But Mr. President, I think we could have gotten the bill readily accepted by the House and we could have gotten it to the President and he would have signed it. Now we have broken the wall and we have three amendments on the bill already; and they are controversial amendments. I expect Members of the House of Representatives will have convictions with respect to those amendments, as we do there in this body.

I personally feel, as does the chairman, that it would seem this was a fair and reasonable amendment and that there are good reasons for it; but I just want to say that obviously much will depend in our conference on the attitude of the distinguished chairman of the House Appropriations Committee and his colleagues, and we may find determined opposition. However, I would certainly go along with the chairman and say we should be willing to take it to conference.

In honesty, while I have never sat as a conferee and not fought for the amendments of the Senate or for the Senate version—because that is what we are there for—I am going to find it very hard to work myself up on amendments that simply mean another continuing resolution and going through the rest of this fiscal year, which, so far as I know, we have never done before, without Congress facing up to passing an appropriation bill.

I understand there will be another amendment on this very formula. When you get to fighting back and forth about the formula of impacted aid funds, you are playing with dynamite, and we may run into trouble in conference.

I do not know about the amendments that are coming along, but I am perfectly willing to go along with the chairman and I will act in good faith, and if this bill must go down the drain, and if we must pass another continuing resolution, that is all right; but here is one who will not vote for another continuing resolution except on the basis of the 1969 bill. Nobody else downtown gets a cent of pay until this year is over. We have too many downtown. If you have had to deal with them as I have had to deal with them recently and seen how often they change their minds, I think you will decide you would be doing a lot of good by having them go without pay for a couple of weeks.

As far as I am concerned, I shall vote against every amendment that is offered, whether it is good, bad, or indifferent, because I would like to see us get down to business and get busy on the bill for fiscal 1971.

If the chairman is willing to accept the amendment, then we can let the hair go with the hide, as we say in New England.

Mr. MAGNUSON. Mr. President, I did not say I would accept it. I cannot speak for the committee. I just pointed out the history of the amendment. I am not sure I will vote for the amendment. Apparently a majority of the Senate believe in this amendment. So the Senator from New Hampshire and I can vote "no" if we call the roll, but I think the amendment will carry.

Mr. COTTON. I think so, too.

Mr. MAGNUSON. I am trying to save a little time.

Mr. SPONG. Mr. President, may I inquire how much time I have remaining?

The PRESIDING OFFICER. The Senator from Virginia has 21 minutes remaining.

Mr. SPONG. Mr. President, without

belaboring this matter, I would like to say this to the Senator from New Hampshire. First, I have no wish to weigh this bill down with amendments. Second, it seems to me the position of the House was somewhat impaired in that a point of order would have prevailed against the language we are trying to take out, if that point of order had been raised. Consequently, I am merely trying to join the Senator from New Hampshire as the patron of a successful amendment to this bill.

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. SPONG. I yield.

Mr. HOLLAND. Will the Senator explain for the record exactly what is the difference in the apportionments to the various districts and the various classes between the provision in the House bill and the provision of the amendment, if it were adopted?

Mr. SPONG. Under the provision put in by the House, category A children would receive 90 percent of their entitlement. Category B children would receive approximately 72 percent of their entitlement. If the program continues as it was contained in the bill that we passed in December, which was vetoed and as it has traditionally, each category would receive 78 percent of their entitlements this year.

In terms of money, no money is added. The same amount of money is to be distributed. What the amendment changes is the way the money will be distributed.

The Senator from Rhode Island was prepared, had we gone into lengthy debate, to put in the RECORD the distribution based on 1969. I hope he will still do so. Some congressional districts will receive less, and some will receive more. But the point of the Senator from Virginia is that we should not change the formula in the middle of the school year and in an appropriations bill. We should leave the study of the entire impacted aid program up to the proper legislative committee and any recommendatons for change should come through that committee.

Mr. HOLLAND. Mr. President, if the Senator will permit me to say so, I think there is great equity in his proposal, but, at the same time, I think we must recognize—and we have in former bills recognized—that class A children are the ones who actually live on military bases and are brought into those areas by the Federal Government to live on those bases.

They do not pay taxes on property. As a matter of fact, in many cases the property that they live on takes off very greatly from the tax potential of their counties. It has been my feeling that they should come first, and we have put them first in bills prior to this time.

I thoroughly agree that this legislation ought to be modified and changed. I cannot see the situation of class A children, in a poor county, where a great big military base has been put and half the property has been taken off the rolls, as comparable, for instance, to that of Fairfax County in the State so well represented by the Senator from Virginia, or to that in Montgomery County or Prince Georges County, Md., where literally thousands of civil service employees live and have their permanent homes, and pay their taxes. I do not think the two situations are similar.

I have no objection to the matter being taken to conference, but I see a very great difference, in equity, between the two classes of children, and the counties where those two classes can be found.

Mr. SPONG. The Senator from Florida is correct, but there is also the fact that the class A children are funded twice as high as class B children by the authorizing legislation, that they are not treated the same even under this language.

Mr. HOLLAND. I have no objection, if the leaders wish, to taking it to conference. I think it will be a very difficult matter to handle in conference. I suspect I may be one of the conferees, and I suspect we are going to have very great difficulty about this particular amendment.

Mr. MAGNUSON. Mr. President, I will say to the Senator from Florida that no matter what we do with this bill now, it is likely to be difficult in conference.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. MAGNUSON. I yield 3 minutes to the Senator from Nebraska.

Mr. HRUSKA. Mr. President, the pending amendment is an effort, not to increase the gross amount of money involved, but to shift the money from one pigeonhole into a combined area of two pigeonholes, to the extent of $505 million.

Following the disposition of this amendment, I intend to offer another amendment, which will have for its purpose a different arrangement of that $505 million. The thrust of my amendment is this: That any school district having 75 percent or more of its children in class A and class B will be entitled to a 95-percent payment of its entitlement. There are 120 schools in America in that category of 75 percent or more. When that proportion is reached, with the big cuts that have been made in this appropriation, some of them will find it impossible to remain in business. I mention that now to the extent that it may enter into the thinking of Senators.

In the city of Bellevue, Nebr., which is the city adjoining the Strategic Air Command, 78 percent of the school children are from federally based families. The local children are 22 percent. Fifty percent of the budget of that school is furnished by the local people, who have 22 percent of the schoolchildren. There is a school budget of $6 million. Half of it is Federal and half local.

Unless the type of amendment I shall propose is adopted, Mr. President, it will mean that that school district will have to close its doors on April 1. It is not a matter of impairing or cutting back or that sort of thing. They cannot raise some $580,000 that they are short. They simply cannot do it, and they are going to close their schools.

There are other districts that are similarly situated, running all the way to 90 percent and 100 percent; and they are going to be out of business.

I mention that fact because it is a matter of trying to get money where it will do more good, in the eyes and by the votes of those who sit as Members of this body.

But I submit that when the impact of this proposal is thrust upon 120 districts located in some 24 States, it will not be good; it will have a bad impact and a disruptive impact.

Mr. FULBRIGHT. Mr. President, will the Senator yield?

Mr. HRUSKA. I yield.

Mr. FULBRIGHT. Under the Spong amendment, would not the schools the Senator is talking about be in exactly the same position that they are in now? It would not change them at all, would it? That is what I understood the Senator from Virginia to say, that this merely preserves the status quo as to the distribution of money.

Mr. HRUSKA. That is not quite right, because under the 1969 law there was this 90 percent entitlement to class A, before they got to dividing the money otherwise.

In the bill that we passed in December, that 90 percent was deleted, and in this bill we find the 90 percent back in there for class A. So it is not preserving the status quo. The adoption of this amendment would put the bill in the same shape as the December-passed bill.

Mr. FULBRIGHT. The Senator is on the committee, and an expert, but I inquired about this from members of the staff, and I was told that the formula of the Senator from Virginia leaves it as it now is and has been for several years. Is that not right?

Mr. SPONG. Yes.

The PRESIDING OFFICER. The time of the Senator from Nebraska has expired.

Mr. HRUSKA. I ask for 2 more minutes.

Mr. MAGNUSON. I yield the Senator from Nebraska 2 additional minutes.

Mr. FULBRIGHT. I, of course, support the Senator from Virginia, and I thought his proposal was going to be accepted.

Mr. HRUSKA. I read from the committee report, on page 62:

> Under the committee allowance, payments for "A" children would be at 90 percent of entitlement, the same percentage as provided in fiscal year 1969 . . .

Mr. SPONG. Yes, but the Senator from Nebraska should be aware that the category "B" children also received 90 percent of their entitlement in that year. All I am trying to do is preserve the same percentage of entitlement for both categories in this fiscal year—to see that both categories are treated the same as they were in the last fiscal year.

Mr. FULBRIGHT. They both get 90 percent.

Mr. HRUSKA. To that extent, I concur.

Mr. SPONG. I believe I am correct in that.

Mr. FULBRIGHT. All I am saying is, the Senator left the impression that it was going to change in some way. To my understanding, it does not change. The Senator's formula leaves it the same?

Mr. SPONG. That is correct.

Mr. FULBRIGHT. That is what I had understood.

The PRESIDING OFFICER. Do Senators yield back their remaining time?

Mr. SPONG. Mr. President, I yield back the remainder of my time.

Mr. MAGNUSON. Mr. President, be-

fore I yield back my time, I ask unanimous consent to have printed in the RECORD at this point an up-to-date analysis by States of what was received in 1969, what the 1970 budget request was, what the conference agreement was, what the House allowance was in the bill as passed, and what is before us today.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

State and outlying areas	1969 actual	1970 budget request	1970 conference agreement	1970 house allowance as passed	1970 House allowance sec. 6 in full; other sections prorated
Total	$505,898,145	$187,000,000	$585,000,000	$425,000,000	$425,000,000
Alabama	9,241,181	2,314,000	10,884,000	7,792,000	8,159,000
Alaska	14,731,443	14,963,000	17,153,000	15,694,000	12,185,000
Arizona	9,187,169	6,685,000	10,699,000	8,854,000	7,600,000
Arkansas	2,842,356	962,000	3,192,000	2,234,000	2,267,000
California	76,264,658	24,648,000	87,314,000	62,025,000	62,030,000
Colorado	12,924,352	3,130,000	15,052,000	10,467,000	10,692,000
Connecticut	3,265,208	1,419,000	3,803,000	2,781,000	2,701,000
Delaware	2,000,165	1,386,000	2,232,000	1,948,000	1,984,000
Florida	17,547,731	5,377,000	20,542,000	14,189,000	14,781,000
Georgia	16,133,291	5,860,000	18,866,000	13,839,000	14,719,000
Hawaii	9,520,455	5,892,000	11,087,000	8,753,000	7,876,000
Idaho	2,707,913	1,014,000	3,154,000	2,270,000	2,240,000
Illinois	12,924,988	4,192,000	14,990,000	10,584,000	10,648,000
Indiana	4,159,363	920,000	4,844,000	3,196,000	3,441,000
Iowa	2,653,905	139,000	3,034,000	1,860,000	2,155,000
Kansas	8,664,571	3,625,000	10,093,000	7,053,000	7,176,000
Kentucky	8,407,184	5,625,000	10,140,000	8,314,000	8,807,000
Louisiana	3,447,717	790,000	4,042,000	2,725,000	2,925,000
Maine	2,594,464	1,624,000	3,021,000	2,426,000	2,146,000
Maryland	25,867,892	3,221,000	30,126,000	19,238,000	21,401,000
Massachusetts	13,710,871	5,818,000	16,167,000	11,825,000	11,799,000
Michigan	4,550,314	2,974,000	5,299,000	4,187,000	3,764,000
Minnesota	3,381,658	936,000	3,935,000	2,685,000	2,795,000
Mississippi	2,593,395	1,122,000	3,020,000	2,256,000	2,145,000
Missouri	8,398,571	2,031,000	9,781,000	6,394,000	6,948,000
Montana	4,204,578	3,345,000	4,897,000	4,168,000	3,478,000
Nebraska	4,624,472	2,647,000	5,386,000	4,195,000	3,826,000
Nevada	3,554,294	1,431,000	4,139,000	2,985,000	2,940,000
New Hampshire	2,065,756	838,000	2,406,000	1,737,000	1,709,000
New Jersey	$10,321,861	$3,544,000	$12,018,000	$8,501,000	$8,539,000
New Mexico	10,219,522	6,662,000	11,902,000	9,653,000	8,454,000
New York	16,738,842	6,270,000	19,640,000	14,081,000	14,327,000
North Carolina	11,886,349	7,049,000	13,080,000	11,472,000	10,898,000
North Dakota	2,664,431	2,926,000	3,098,000	2,922,000	2,201,000
Ohio	10,796,237	1,238,000	12,485,000	7,758,000	8,869,000
Oklahoma	12,601,770	3,595,000	14,673,000	10,705,000	10,423,000
Oregon	3,282,405	1,170,000	3,847,000	2,727,000	2,750,000
Pennsylvania	9,290,582	517,000	10,234,000	6,122,000	7,269,000
Rhode Island	3,453,728	1,559,000	4,022,000	2,978,000	2,857,000
South Carolina	8,148,582	3,661,000	9,618,000	7,276,000	7,339,000
South Dakota	3,425,076	2,794,000	3,983,000	3,274,000	2,831,000
Tennessee	6,763,256	677,000	7,876,000	5,121,000	5,595,000
Texas	30,311,176	7,619,000	35,180,000	24,773,000	24,991,000
Utah	7,069,317	1,245,000	8,223,000	5,648,000	5,848,000
Vermont	136,062	4,000	158,000	101,000	113,000
Virginia	35,704,596	6,663,000	40,692,000	28,427,000	29,620,000
Washington	12,296,924	4,720,000	14,321,000	10,471,000	10,173,000
West Virginia	520,634	21,000	606,000	368,000	431,000
Wisconsin	2,095,973	515,000	2,441,000	1,709,000	1,734,000
Wyoming	1,696,509	1,292,000	1,976,000	1,649,000	1,403,000
District of Columbia	5,436,944	297,000	6,330,000	3,870,000	4,497,000
American Samoa					
Canal Zone					
Guam	2,009,808	1,466,000	2,341,000	1,929,000	1,663,000
Puerto Rico	6,592,297	6,172,000	6,524,000	6,381,000	6,422,000
Virgin Islands	24,428		28,000	14,000	20,000
Wake Island	240,921	396,000	396,000	396,000	396,000

Note: All tables based on 1969 applications from school districts.

Mr. MAGNUSON. I yield back the remainder of my time.

Mr. FULBRIGHT. Mr. President, I ask for the yeas and nays.

Mr. MAGNUSON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MAGNUSON. The amendment before us is the Spong amendment, is that correct?

Mr. FULBRIGHT. That is correct.

The PRESIDING OFFICER. The Senator is correct.

The yeas and nays were ordered.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Virginia (Mr. SPONG). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. KENNEDY. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from Connecticut (Mr. DODD), the Senator from Iowa (Mr. HUGHES), the Senator from Washington (Mr. JACKSON), the Senator from Louisiana (Mr. LONG), the Senator from Minnesota (Mr. MCCARTHY), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Rhode Island (Mr. PASTORE), the Senator from Missouri (Mr. SYMINGTON), and the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

I further announce that the Senator from Alaska (Mr. GRAVEL) is absent on official business.

I further announce that, if present and voting the Senator from Indiana (Mr. BAYH), the Senator from Washington (Mr. JACKSON), the Senator from Louisiana (Mr. LONG), the Senator from Rhode Island (Mr. PASTORE), and the Senator from Texas (Mr. YARBOROUGH) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOK), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senators from Oregon (Mr. HATFIELD and Mr. PACKWOOD), the Senators from Illinois (Mr. PERCY and Mr. SMITH), the Senator from Vermont (Mr. PROUTY) and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Ohio (Mr. SAXBE) is absent on official business.

If present and voting, the Senator from Illinois (Mr. PERCY) would vote "nay."

If present and voting, the Senator from Illinois (Mr. SMITH) would vote "yea."

The result was announced—yeas 60, nays 16, as follows:

[No. 74 Leg.]

YEAS—60

Allen	Fong	Mondale
Allott	Fulbright	Murphy
Anderson	Gurney	Muskie
Bellmon	Harris	Nelson
Bennett	Hart	Pearson
Bible	Hartke	Pell
Boggs	Hollings	Ribicoff
Brooke	Inouye	Russell
Byrd, Va.	Javits	Schweiker
Byrd, W. Va.	Jordan, N.C.	Scott
Cannon	Jordan, Idaho	Sparkman
Case	Kennedy	Spong
Cooper	Magnuson	Stennis
Cranston	Mansfield	Talmadge
Dole	Mathias	Thurmond
Dominick	McClellan	Tower
Eagleton	McGovern	Tydings
Eastland	McIntyre	Williams, N.J.
Ellender	Metcalf	Williams, Del.
Ervin	Miller	Young, Ohio

NAYS—16

Aiken	Cotton	Gore
Baker	Curtis	Griffin
Burdick	Goodell	Hansen
Holland	Proxmire	Young, N. Dak.
Hruska	Randolph	
McGee	Smith, Maine	

NOT VOTING—24

Bayh	Hughes	Pastore
Church	Jackson	Percy
Cook	Long	Prouty
Dodd	McCarthy	Saxbe
Fannin	Montoya	Smith, Ill.
Goldwater	Moss	Stevens
Gravel	Mundt	Symington
Hatfield	Packwood	Yarborough

So Mr. SPONG's amendment was agreed to.

Mr. FULBRIGHT. Mr. President, I move that the vote by which the amendment was agreed to be reconsidered.

Mr. SPARKMAN. Mr. President, I move that the motion to reconsider be laid on the table.

The motion to lay on the table was agreed to.

Mr. JAVITS. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk proceeded to read the amendment.

Mr. JAVITS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with and I will explain it to the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered; and the amendment will be printed in the RECORD at this point.

The amendment offered by the Senator from New York is as follows:

On page 60, strike out lines 3 through 15 and insert in lieu thereof the following:

"SEC. 407. No part of the funds appropriated under this Act shall be used to provide a loan, guarantee of a loan or a grant to any applicant who has been convicted by any court of general jurisdiction of any crime which involves the use of or the assistance to others

in the use of force, trespass or the seizure of property under control of an institution of higher education to prevent officials or students at such an institution from engaging in their duties or pursuing their studies."

Mr. JAVITS. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from New York is recognized for 10 minutes. The opponents have 10 minutes.

Mr. JAVITS. Mr. President, I shall need only 5 minutes.

Mr. President, this amendment relates to college disruption. The amendment I have proposed would substitute for the language used in section 407 the language used in the last approved HEW appropriation bill, the 1969 appropriation, section 411.

The difference between the language which is here contained and the language I have offered in the amendment is that this particular provision, 407, relates to precisely the same acts, force, or threat of force, or seizure of property, in respect to college disruptions as does my amendment and the language in the 1969 appropriations bill. But the language before us does not say who finds whether force has been used; hence, it leaves it to HEW, as a practical effect.

We have testimony where, if my amendment leaves it to the court and if there is a conviction, that is it. That ends it. The matter is automatically determined on the facts.

The Commissioner of Education, Mr. Allen, has testified to the following effect. I read from page 2111 of his testimony on the appropriations bill:

Administratively, it is extremely difficult for us to do so——

That means, to play the role of policeman to educational institutions.

Continuing reading:

It would be extremely difficult to catalog the 1,500,000 college students who receive benefits, nor can we lay down a uniform code of conduct that would be desirable or acceptable for all students in the country.

Thus, instead of leaving the question of administration, definition, and identification to HEW, my amendment would simply adopt the language used before which has worked—and incidentally, 350 students, he testified, have been denied aid by use of that amendment—and have a court make the finding. That is it. Nothing more to it than that.

I point out, for the information of the Senate, that there is a somewhat different provision in the higher education bill, section 504.

One could argue that they should be uniform, but we went through this last year and the Senate decided it wanted a direct provision in the appropriation bill to which I have referred; so, I have offered it as an amendment. There is no reason to bruit this thing around again. We simply have to decide that something should go in here and put something in which is administratively feasible.

Mr. GOODELL. Mr. President, I favor the amendment. We have debated this many times before. I think we probably should have even less than the provisions that the Senator from New York would place in the law. The Senator from New York is simply going to reduce the provision in the bill to the present provision of law and I favor and hope that it will pass.

Mr. JAVITS. Might I just say, in response, that I never believe in going over the same ground again when the Senate has come to a policy decision, unless there is some reason to suppose there is a change. I do not see any reason on this so I propose at least that we do something that is administratively feasible.

Mr. MAGNUSON. Mr. President, I would merely suggest that the committee gave this matter consideration over the past year; in fact, for 2 years it gave it adequate consideration as to different methods of approach, and after long discussion we did arrive at the fact that we thought the House language should be adopted this year.

Mr. President, I yield back the remainder of my time.

Mr. JAVITS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time on this amendment has now been yielded back.

The question is on agreeing to the amendment of the Senator from New York. (Putting the question.) The nays appear to have it.

Mr. JAVITS. Mr. President, may I ask for the yeas and nays?

The yeas and nays were ordered.

The PRESIDING OFFICER. The questions is on agreeing to the amendment of the Senator from New York.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. KENNEDY. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from Connecticut (Mr. DODD), the Senator from Iowa (Mr. HUGHES), the Senator from Washington (Mr. JACKSON), the Senator from Louisiana (Mr. LONG), the Senator from Minnesota (Mr. MCCARTHY), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Rhode Island (Mr. PASTORE), the Senator from Missouri (Mr. SYMINGTON), the Senator from Texas (Mr. YARBOROUGH), the Senator from Ohio (Mr. YOUNG), are necessarily absent.

I further announce that the Senator from Alaska (Mr. GRAVEL), is absent on official business.

On this vote, the Senator from Washington (Mr. JACKSON) is paired with the Senator from Rhode Island (Mr. PASTORE). If present and voting, the Senator from Washington would vote "nay" and the Senator from Rhode Island would vote "yea."

I further announce that, if present and voting, the Senator from Louisiana (Mr. LONG), would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOK), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from Oregon (Mr. PACKWOOD), the Senators from Illinois (Mr. PERCY and Mr. SMITH), the Senator from Vermont (Mr. PROUTY), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Ohio (Mr. SAXBE) is absent on official business.

If present and voting, the Senators from Illinois (Mr. PERCY and Mr. SMITH) would each vote "yea."

The result was announced—yeas 37, nays 38, as follows:

[No. 75 Leg.]

YEAS—37

Aiken	Griffin	Murphy
Baker	Harris	Muskie
Bellmon	Hart	Nelson
Brooke	Inouye	Pearson
Burdick	Javits	Pell
Case	Jordan, Idaho	Proxmire
Cooper	Kennedy	Ribicoff
Cranston	Mansfield	Schweiker
Dole	Mathias	Scott
Dominick	McGee	Tydings
Eagleton	McGovern	Williams, N.J.
Fulbright	Metcalf	
Goodell	Mondale	

NAYS—38

Allen	Ervin	Miller
Allott	Fong	Randolph
Anderson	Gore	Russell
Bennett	Gurney	Smith, Maine
Bible	Hansen	Sparkman
Boggs	Hartke	Spong
Byrd, Va.	Holland	Stennis
Byrd, W. Va.	Hollings	Talmadge
Cannon	Hruska	Thurmond
Cotton	Jordan, N.C.	Tower
Curtis	Magnuson	Williams, Del.
Eastland	McClellan	Young, N. Dak.
Ellender	McIntyre	

NOT VOTING—25

Bayh	Jackson	Prouty
Church	Long	Saxbe
Cook	McCarthy	Smith, Ill.
Dodd	Montoya	Stevens
Fannin	Moss	Symington
Goldwater	Mundt	Yarborough
Gravel	Packwood	Young, Ohio
Hatfield	Pastore	
Hughes	Percy	

So Mr. JAVITS' amendment was rejected.

Mr. HRUSKA. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk proceeded to state the amendment.

Mr. HRUSKA. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, reads as follows:

On page 28, line 15, insert the following after the word "of": "95 per centum of the amounts payable pursuant to sections 3(a) and 3(b) of said title to any local educational agency which the Commissioner determines will have in the fiscal year for which such assistance is provided a total number of pupils of whom 75 per centum or more are the children of dependents of federally connected parents as defined and to all other local educational agencies."

The PRESIDING OFFICER. The Senate will be in order.

How much time does the Senator yield himself?

Mr. HRUSKA. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 5 minutes.

Mr. HRUSKA. Mr. President, the amendment which I offer seeks to amend the language in the bill which is legis-

lative in character. I therefore raise the question of germaneness.

The PRESIDING OFFICER. The Senate will be in order.

The Senator may proceed.

Mr. HRUSKA. Mr. President, because of the fact that this amendment seeks to amend language in the bill which is legislative in character, I raise the question of germaneness of this amendment to that portion of the bill it proposes to amend.

The PRESIDING OFFICER (Mr. EAGLETON in the chair). The question must be submitted to the Senate for a vote without debate.

All in favor signify by saying "aye"; opposed, "no."

The ayes have it, and the amendment is held to be germane.

Mr. HRUSKA. Mr. President, I wish to assure the membership I shall not take long.

This amendment has to do with the formula which controls the division of funds for impacted areas. All of us know that this is a subject that will receive careful analysis and revision in the near future. I agree that it is time to carefully examine this program because the original objectives of impacted aid have, in the judgment of many, been miscarried and have become maladjusted. It is altogether right and proper that this program should receive a review and revision. I question, however, if this review can or should be attempted this late in the fiscal year and on the floor of the Senate.

The school districts which receive this aid are operating on budgets which were down almost a year ago. These budgets in most cases reflected an anticipation of what had become to be a normal level of funding. Now at this late date we are imposing severe reductions on these districts which provide education to the children and dependents of Federal employees. When these cuts are imposed on a school district that is not composed of any great proportion of children in federally impacted areas it does not make too much that makes a great difference. But when the proportion of these children living on Federal bases, or children of parents whose fathers work on a base and they live nearby this reduction creates a real hardship.

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. HRUSKA. I am happy to yield to my colleague.

Mr. CURTIS. Does the Senator's amendment go to this problem? In some communities a great number of children, perhaps children of military personnel, are sent to school and they might comprise 80 percent of the school or nearly so; while there are other localities where the number of children covered by the intent of the bill is relatively few, perhaps 4 percent, 3 percent, or 5 percent.

Is it the objective of the Senator's amendment to grant a preference in the amount of reimbursement to schools where they have to carry a proportionately much heavier load?

Mr. HRUSKA. Yes. The amendment is designed for that purpose. It is designed to apply to school districts where the number of class A and B students exceeds 75 percent. In these limited cases it will provide 95 percent of the entitlement.

Mr. CURTIS. Mr. President, will the Senator yield further?

Mr. HRUSKA. I yield.

Mr. CURTIS. It seems to me this is very just and it should have the support of every Senator. If there is a school district where the local children amount to less than 25 percent of the enrollment, it is self-evident that they have a very heavy burden to carry to educate children who belong to our military establishment.

I hope the Senator's amendment will not only be agreed to but that it will be agreed to by a large vote.

Mr. HRUSKA. I thank the Senator for his contribution.

Mr. President, I state again the purpose of the amendment. When the percentage of schoolchildren from Federal property in any school district exceeds 75 percent of the pupils in that school, there will be a payment of 95 percent of the entitlement of that school.

I hasten to add that no more money is added to the bill. This amendment simply changes the allocation of funds already in the bill.

I should like to illustrate a situation that is particularly harsh. In the city of Bellevue, Nebr., which is the community located next to the headquarters of the Strategic Air Command, there are roughly 10,000 children in that school district. Seventy-eight percent of these children are what we know as federally connected schoolchildren. Only 22 percent of these students are local children. In the current year, as in the past, that community has raised 50 percent of the financing for the local school even though only 22 percent of the students are local children.

The budget for the current year is in excess of $6 million.

Under this bill that school district will be short approximately $500,000 of the funds it needs to continue operation. If some relief is not given to that district they will have to close their doors on April 1. They cannot go beyond that date, I am told.

It seems to me that with other schools in the same category—there are 12 schools in 26 States—this matter should be taken care of.

Mr. TALMADGE. Mr. President, will the Senator yield?

Mr. HRUSKA. I yield.

Mr. TALMADGE. I understand the amendment is to allocate 95 percent of the funds to school districts that have 75 percent or more of federally impacted children.

Mr. HRUSKA. The Senator is correct.

Mr. TALMADGE. What would it do to school districts that do not have 75 percent or more of federally impacted children?

Mr. HRUSKA. It would decrease aid to them. It would recognize a priority in this regard. The decrease, however, would be only about 2 to 3 percent for each remaining school district. It is justifiable on this basis. It is one thing to apply a 2- or 3-percent decrease in a situation where there are 25 or 30 percent federally impacted children, as opposed to applying that decrease where there are 75 percent, 80 percent, or 90 percent federally impacted children in a school district.

It is not a horse of one color in one case and a horse of another color in another case; it is a horse in one case and a rabbit in the other case. The result is disastrous.

Mr. TALMADGE. I understand with the adoption of the amendment of the Senator from Virginia all districts would get 78 percent entitlement of their funds, whether that be A or B students. Is that correct?

Mr. MAGNUSON. That is correct.

Mr. HRUSKA. Those figures have been represented to us.

Mr. SPONG. That is an approximation.

Mr. TALMADGE. What percentage would they get under the amendment of the Senator from Nebraska?

Mr. HRUSKA. I did not understand the Senator's question.

Mr. TALMADGE. What percentage would we get if the amendment of the Senator from Nebraska were agreed to?

Mr. HRUSKA. As you know the Spong amendment was just adopted. I have not had an opportunity to evaluate the change included in that amendment.

The Spong amendment will not adversely affect the districts which I am talking about, if my amendment is approved. It will be a cruel blow to these schools if my amendment is rejected.

The reduction for other schools under my amendment will be slight. The total entitlement for these 121 districts runs about $51 or $52 million. The entire sum available for this impacted area under Public Law 874 is $505 million. This comparison would give some idea about how slight the impact of my amendment would be on other districts. It would be the difference between 78 and 90 percent being applied to the base of $51 or $52 million, as opposed to the base of $505 million.

Mr. MILLER. Mr. President, will the Senator yield?

Mr. HRUSKA. I am happy to yield.

Mr. MILLER. I may say to the Senator from Nebraska that I know something of the situation to which he has recently referred. I understand how difficult it is. I have the deepest sympathy for what he proposes. But his amendment may go a little further than necessary.

As I understand his amendment, it refers to 75 percent of the students of federally connected parents. It seems to me there might be a distinction between parents who are working in typical Federal agencies and those who are connected with military reservations. A military reservation, such as in the situation that the Senator from Nebraska has referred to, has literally hundreds of thousands of persons, and their incomes are not very large. This puts an added burden on the school districts.

So it seems to me that the Senator might consider modifying his amendment so as to have it refer to parents employed at military reservations, and thus provide benefits for those who really need them.

Mr. HRUSKA. Perhaps that would sharpen the amendment a little, but the net result would not be any different from the number of school districts af-

fected by the amendment as reported, as related to the department tables.

Mr. MILLER. Do I correctly understand that those school districts are ones tied in with military reservations?

Mr. HRUSKA. That is correct. A scanning of the school districts involved will show this to be true.

Mr. MILLER. I appreciate the Senator's response. What the Senator is saying is that because of the 75-percent figure, the impact of his amendment would be only with respect to school districts affected by military reservations.

Mr. HRUSKA. The main thrust of it. There are some areas such as in Indian reservation regions, but those are very, very small. The bulk of it—the main thrust—will be found to be in the military areas; and all of them, in the case of the city of Bellevue, are military. The Senator from Iowa is correct in his characterization of that base.

Mr. BENNETT. Mr. President, will the Senator yield?

Mr. HRUSKA. I yield.

Mr. BENNETT. I am interested in the arithmetic. If only $50 million is involved in the areas that will benefit from the Senator's amendment, then they will benefit only from the difference between 78 and 90 percent of $50 million, which is 12 percent, or about $6 million. That would mean that the difference to all the other areas, which I think have a total of something above $500 million, would be somewhere between 1 and 2 percent.

Mr. HRUSKA. That is correct. In that, I think, lies a great of the difference in the situations, as I have observed already. It is one thing to vary a small percentage of money in a school district budget by 1 or 2 percent; but when the percentage of a school's budget that has 80 percent is varied, it is a story of a different character.

Mr. SPONG. Mr. President, will the Senator yield?

Mr. HRUSKA. I yield.

Mr. SPONG. I am interested in the question of the Senator from Utah. He used the figure 90 percent. My understanding is that the amendment of the Senator from Nebraska would give a 95-percent entitlement, rather than 90 percent.

Mr. HRUSKA. That is right.

Mr. SPONG. May I ask this question also? In the computation of the 75 percent in the amendment of the Senator from Nebraska as to the school population, he is using both category A and category B. Is that correct?

Mr. HRUSKA. That is correct.

Mr. SPONG. Whether or not they live on the reservation or base is not the criterion; the Senator is using on and off, A and B.

Mr. HRUSKA. That is correct. I might say in that connection that out of the 10,000 school children in Bellevue, 4,300 live on the base and 3,500 live off the base in the village of Bellevue.

Mr. SPONG. The Senator is speaking of Bellevue, but I am speaking of the United States generally. Seventy-five percent would come from category A and B. We have just voted not to change the formula. The effect of the amendment of the Senator from Nebraska, if adopted, would be to change the formula for impacted aid. Is that correct?

Mr. HRUSKA. It would change it to the extent of giving priority to these 121 school districts in the limited fashion described by the amendment; that is right.

Mr. SPONG. I merely wanted tc apprise Senators of that fact.

Mr. MAGNUSON. Mr. President, is the Senator from Nebraska through?

Mr. HRUSKA. Yes.

Mr. MAGNUSON. Of course, if the total amount provided in the bill, $505 million, in round figures, for impacted aid is not changed, and then amounts are added for the 121 districts, I do not know how much that would amount to. How much would it be to the 121 districts as compared to what they would get now?

Mr. HRUSKA. I do not know what that computation is. I have a list of all the 121 districts here, together with the 100-percent entitlements which they would have. The total of those entitlements is $53 million plus.

Mr. MAGNUSON. That is the total?

Mr. HRUSKA. That is the total.

Mr. MAGNUSON. But if the amendment of the Senator from Nebraska were not agreed to, they would still be getting it. It is the difference between the 78 percent and the 95 percent. The Senator proposes to increase it to 95 percent.

Mr. HRUSKA. Yes.

Mr. MAGNUSON. And that amount would have to be taken away from the others.

Mr. HRUSKA. Yes.

Mr. MAGNUSON. If we give something to the others, without changing the total, we have to take it away from somebody. We have not been able to get all the figures. The Senator from Nebraska was patient with the committee, because the figures were not available, and we said the proposal could be presented on the floor.

The reason why I am opposed to the amendment is that it will have to take away from the other districts a certain percentage. The Senator mentioned between two and three.

Mr. HRUSKA. That was the figure given to us.

Mr. MAGNUSON. It is the difference between 78 percent and 95 percent with respect to the 121 districts. Whatever that amount adds up to must be taken away from other districts.

Mr. HRUSKA. As applied to the total figure of $53 million; that is right.

Mr. President, I yield myself 3 additional minutes. The distinguished chairman of the committee is right. It will have to be taken away from some place else in order to make up this priority and preference, but may I suggest that when there was a reduction in the moneys available for this purpose, much more was taken away from these schools in terms of dollars and percentages. So when we restore, we ought to give them a little back.

Mr. MAGNUSON. I was not discussing that question. The administration proposed $202 million as against $520 million, or $505 million.

Mr. HRUSKA. Is the Senator suggesting that we go back to that figure?

Mr. MAGNUSON. No; I am not talking about the figures. If I had my way, I would like to add all these figures, but the committee would not go along with it.

Mr. President, I yield back the remainder of my time.

Mr. HRUSKA. Mr. President, I yield back the remainder of my time with this final statement: This is a matter of emergency, and not a matter of scaling down the efforts of the school districts involved. It is a matter of putting them totally out of business in most of the areas affected.

I urge that the amendment be adopted. I yield back my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back. The question is on agreeing to the amendment of the Senator from Nebraska.

Mr. HRUSKA. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MANSIELD. Mr. President, I did not hear the ruling of the Chair as to whether there was a sufficient second to the request for the yeas and nays.

The PRESIDING OFFICER. There was a sufficient second.

Mr. MAGNUSON. Regular order, Mr. President.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the request for the yeas and nays be withdrawn.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. HOLLAND. Mr. President, I ask for a division.

The PRESIDING OFFICER. On the division, the amendment is rejected.

Mr. HRUSKA. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. It is too late; the result of the vote has been announced.

Mr. MANSFIELD. It is not too late, Mr. President. If it is too late, there is a new rule operating in this Chamber.

The PRESIDING OFFICER. The Senator can move to reconsider, but the result of the vote has been announced on a division. A request for the yeas and nays is not in order after the result has been announced.

Mr. MANSFIELD. Mr. President, then I move to reconsider the vote by which the amendment was rejected.

Mr. FULBRIGHT. I move to lay that motion on the table.

Mr. MANSFIELD. I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to reconsider the vote by which the amendment of the Senator from Nebraska (Mr. HRUSKA) was rejected. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. KENNEDY. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the

Senator from California (Mr. CRANSTON), the Senator from Connecticut (Mr. DODD), the Senator from Iowa (Mr. HUGHES), the Senator from Washington (Mr. JACKSON), the Senator from Louisiana (Mr. LONG), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Montana (Mr. METCALF), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Rhode Island (Mr. PASTORE), the Senator from Missouri (Mr. SYMINGTON), the Senator from Texas (Mr. YARBOROUGH), and the Senator from Ohio (Mr. YOUNG) are necessarily absent.

I further announce that the Senator from Alaska (Mr. GRAVEL) is absent on official business.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE) would vote "nay."

On this vote, the Senator from Washington (Mr. JACKSON) is paired with the Senator from Louisiana (Mr. LONG). If present and voting, the Senator from Washington would vote "yea" and the Senator from Louisiana would vote "nay."

Mr. SCOTT. I announce that the Senator from Kentucky (Mr. COOK), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senators from Oregon (Mr. HATFIELD and Mr. PACKWOOD), the Senators from Illinois (Mr. PERCY and Mr. SMITH), the Senator from Vermont (Mr. PROUTY), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Ohio (Mr. SAXBE) is absent on official business.

On this vote, the Senator from Illinois (Mr. PERCY) is paired with the Senator from South Dakota (Mr. MUNDT). If present and voting, the Senator from Illinois would vote "yea" and the Senator from South Dakota would vote "nay."

The result was announced—yeas 31, nays 41, as follows:

[No. 76 Leg.]

YEAS—31

Aiken	Gore	Muskie
Allott	Harris	Nelson
Anderson	Hart	Pearson
Boggs	Hartke	Pell
Brooke	Inouye	Ribicoff
Byrd, Va.	Javits	Smith, Maine
Case	Mathias	Spong
Cotton	McGee	Tydings
Fong	McGovern	Williams, N.J.
Fulbright	McIntyre	
Goodell	Mondale	

NAYS—41

Allen	Ellender	Murphy
Baker	Ervin	Proxmire
Bellmon	Gurney	Randolph
Bennett	Hansen	Russell
Bible	Holland	Schweiker
Burdick	Hollings	Scott
Byrd, W. Va.	Hruska	Sparkman
Cannon	Jordan, N.C.	Stennis
Cooper	Jordan, Idaho	Talmadge
Curtis	Kennedy	Thurmond
Dole	Magnuson	Tower
Dominick	Mansfield	Williams, Del.
Eagleton	McClellan	Young, N. Dak.
Eastland	Miller	

NOT VOTING—28

Bayh	Dodd	Griffin
Church	Fannin	Hatfield
Cook	Goldwater	Hughes
Cranston	Gravel	Jackson
Long	Packwood	Stevens
McCarthy	Pastore	Symington
Metcalf	Percy	Yarborough
Montoya	Prouty	Young, Ohio
Moss	Saxbe	
Mundt	Smith, Ill.	

So the motion to lay on the table was rejected.

The PRESIDING OFFICER. The question is on agreeing to the motion to reconsider.

The motion was agreed to.

The PRESIDING OFFICER. The question now recurs on the adoption of the amendment.

Mr. HRUSKA. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Nebraska. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KENNEDY. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Connecticut (Mr. DODD), the Senator from Michigan (Mr. HART), the Senator from Iowa (Mr. HUGHES), the Senator from Washington (Mr. JACKSON), the Senator from Louisiana (Mr. LONG), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Montana (Mr. METCALF), the Senator from New Mexico (Mr. MONTOYA, the Senator from Utah (Mr. MOSS), the Senators from Rhode Island (Mr. PASTORE and Mr. PELL), the Senator from Missouri (Mr. SYMINGTON), the Senator from Texas (Mr. YARBOROUGH), and the Senator from Ohio (Mr. YOUNG) are necessarily absent.

I also announce that the Senator from Alaska (Mr. GRAVEL) is absent on official business.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE) would vote "nay."

On this vote, the Senator from Washington (Mr. JACKSON) is paired with the Senator from Louisiana (Mr. LONG). If present and voting, the Senator from Washington would vote "nay" and the Senator from Louisiana would vote "yea."

Mr. SCOTT. I announce that the Senator from Kentucky (Mr. COOK), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senators from Oregon (Mr. HATFIELD and Mr. PACKWOOD), the Senators from Illinois (Mr. PERCY and Mr. SMITH), the Senator from Vermont (Mr. PROUTY) and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Ohio (Mr. SAXBE) is absent on official business.

If present and voting, the Senator from Illinois (Mr. PERCY) would vote "nay."

On this vote, the Senator from South Dakota (Mr. MUNDT) is paired with the Senator from Illinois (Mr. SMITH). If present and voting, the Senator from South Dakota would vote "yea" and the Senator from Illinois would vote "nay."

The result was announced—yeas 20, nays 49, as follows:

[No. 77 Leg.]

YEAS—20

Bennett	Gurney	Proxmire
Burdick	Holland	Sparkman
Curtis	Hruska	Stennis
Dole	Jordan, Idaho	Thurmond
Eastland	Mansfield	Tower
Ellender	Miller	Young, N. Dak.
Ervin	Murphy	

NAYS—49

Aiken	Fong	Mondale
Allen	Fulbright	Muskie
Allott	Goodell	Nelson
Anderson	Gore	Pearson
Baker	Hansen	Randolph
Bellmon	Harris	Ribicoff
Bible	Hartke	Russell
Boggs	Hollings	Schweiker
Brooke	Inouye	Scott
Byrd, Va.	Javits	Smith, Maine
Byrd, W. Va.	Jordan, N.C.	Spong
Cannon	Kennedy	Talmadge
Case	Magnuson	Tydings
Cooper	Mathias	Williams, N.J.
Cotton	McGee	Williams, Del.
Dominick	McGovern	
Eagleton	McIntyre	

NOT VOTING—31

Bayh	Hughes	Pell
Church	Jackson	Percy
Cook	Long	Prouty
Cranston	McCarthy	Saxbe
Dodd	McClellan	Smith, Ill.
Fannin	Metcalf	Stevens
Goldwater	Montoya	Symington
Gravel	Moss	Yarborough
Griffin	Mundt	Young, Ohio
Hart	Packwood	
Hatfield	Pastore	

So Mr. HRUSKA's amendment was rejected.

Mr. MURPHY. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The BILL CLERK. It is intended to be proposed by Mr. MURPHY: On page 26, lines 22 and 23, strike out "$252,393,000" and insert in lieu thereof "$262,393,000".

On page 27, line 5, strike out "$5,000,000" and insert in lieu thereof "$15,000,000".

The PRESIDING OFFICER. Ten minutes have been allocated to the Senator from California. How much time does he yield himself?

Mr. MURPHY. Six minutes.

The PRESIDING OFFICER. The Senator from California is recognized for 6 minutes.

Mr. MURPHY. Mr. President, I am reluctant to move to increase the funds in the Labor-Hew appropriations bill before us today in view of the budgetary problems, and I would not do so if I did not feel so strongly about the dropout prevention program. The dropout prevention program is not a partisan matter; rather, it is a priority education program that has great promise and potential in bringing about some of the educational changes and improvements that are direly needed by society.

Mr. President, the dropout prevention program was authored by me in 1967 and it was incorporated into the elementary and secondary education amendments of that year. The program was drafted in consultation with some of the leading educators in the country including Dr. James Conant. It was drafted because I felt that both for society's sake and for the students' sake, we can not allow 1 million youngsters to drop out of school each year. This is par-

ticularly true in view of the fact that we are in the midst of an education explosion and a technological revolution, making a high school education or the acquisition of a skill a must.

In introducing the measure, I also cited statistics showing that the high dropout rates in our 15 largest cities varied from 21.4 to 46.6 percent. As bad as these rates were, when one focuses on the poverty schools within these areas, the dropout rate is shocking. In these poverty schools, 70 percent drop out. These dropouts are the "social dynamite" that Dr. James Conant warned the country about in 1961. This is the problem to which the dropout prevention program is addressed.

The dropout prevention program was designed to give maximum freedom and flexibility for experimentation at the State and local level. Under the program local and State educational agencies submit innovative proposals which zero resources on a particular school or on a particular classroom in an effort to have a major impact on the dropout problem. Eligible schools must be located in urban and rural areas having a high percentage of children from low-income families and a high percentage of children who drop out of school. The local educational agency, in addition to securing the approval of the State educational agency, is required to identify the dropout problem, analyze the reasons the students are leaving school, and tailor programs designed to prevent or reduce dropouts. Furthermore, and most significantly, the program requires objective evaluation.

Mr. President, the dropout prevention program has had the strong support of the previous administration. The dropout prevention program enjoys the strong support of Secretary Finch and Commissioner of Education, Mr. Allen. I, of course, am exceedingly proud that President Nixon in his letter of February, to Speaker McCormack, outlining a possible compromise on the Labor-HEW appropriations bill, singled out the dropout prevention program and specifically asked for "$10 million for projects to prevent the school dropouts" which the President said are "designed to find new ways to deal with problems where the old ways have been found to be inadequate." The President has identified the dropout prevention program, as have I, as a priority program. President Nixon believes in this program, and despite the budgetary problems, has specifically asked the Congress to increase the funding of the dropout prevention program.

Probably the project that has generated the most national interest is the Texarkana one. In this project, the local school system decided to enter into a performance contract with private industry to raise reading and math scores of potential dropouts. Performance contracting, as the name implies, means the company must perform in order to get paid. In other words, payment is made only for results. The performance contract in this instance calls for the raising of reading and math scores one grade level in 80 hours of instruction for $80. Importantly, the school system is deeply involved, with the contract stipulating that when the experiment is concluded, the company must have made the school personnel capable of continuing the instruction method used.

Preliminary results are most encouraging. Data that has been supplied to me based on February 2 testing indicates that the contractor has raised reading scores one and one-half grades and math scores approximately one grade in only 45 hours of instruction. These figures indicate that the contractor is ahead of its performance contract. Also, of the 125 students enrolled in the experimental program, only two have dropped out and one was because of pregnancy. In contrast, in a control group, 10 percent of the youngsters have already dropped out.

Mr. President, this is hard data, and it indicates that the program is working. That the Nation's school systems are following Texarkana is seen by the fact that San Diego is planning a $2.4 million performance contract. This is the first large urban school district in the country to express an interest in this type of approach. I do know there are other large systems, namely, Detroit, Dallas, Little Rock, New York, and Los Angeles, which are carefully considering this approach. Yet, Mr. President, unless we adopt this amendment, Texarkana will not be able to expand this successful project to the important elementary level. This would be tragedy in my judgment.

Mr. President, we know that dropouts are involved in crime at a rate 10 times higher than high school graduates. We are all concerned with the riots and disturbances that have plagued all too many of our school systems. I believe that the dropout prevention projects are having a salutary effect in these troubled school areas. For example, in Baltimore and St. Louis, despite general student demonstrations and disturbances in the area where the dropout projects are located, the disturbances did not occur in the schools where the dropout programs are in operation.

Mr. President, the dropout prevention program is a no-nonsense, practical approach to education. Some of the concepts built into the dropout prevention program are going to have a significant impact on education programs throughout this country. Dropout prevention projects are required to spell out their objectives. Having stated their objectives, they will be held accountable for achieving them. Most importantly, and I believe this is a first for the Office of Education, an educational audit will be done on each dropout prevention project. This educational audit will seek to determine, in terms of student learning, what the taxpayer is getting for his tax investment. This educational audit will be done by an independent organization outside of the project and will attempt to verify the project's performance. This is in addition to intensive in-house evaluations that will be done on the dropout prevention projects. A preliminary outside evaluation has been done on the Texarkana project. And their conclusion was:

> Test results indicate that experimental students are doing significantly better in vocabulary and reading comprehension.

Mr. President, the interest and the potential in the dropout program can be seen in the fact that over a thousand requests from independent agencies to submit preliminary dropout prevention programs have been received by the Office of Education. To fund all these programs would take over $700 million. It was this kind of interest and the merit of the program that prompted some of my colleagues on the Labor and Public Welfare Committee to move to increase the authorization of the dropout prevention program from the present $30 million level to $250 million by 1974. Obviously, as the author of the dropout prevention program, I was very pleased with this strong indication of the committee's support, but I did what perhaps is unheard of—I urged my committee colleagues not to raise the authorization level by that magnitude. I pointed out that the dropout prevention program was not intended to take care of all the dropouts. Rather, its intent was to identify and attack some of the worst situations in the country by establishing highly visible demonstration projects that are large enough to have significant impact, while at the same time small enough in number, to be carefully monitored and evaluated so that their success could be assured and duplicated in other sections of the country. These educational research and development efforts, the dropout prevention projects, are live educational laboratories whose work has great national interest and implication in dealing with some of the most persistent domestic problems confronting our country.

Mr. President, in the National Education Journal of December 1966, the following statement appeared with respect to educational change and reform:

> One often gets the eerie impression of huge clouds of educational reform drifting back and forth from coast to coast and only occasionally touching down to blanket an actual educational institution.

The dropout prevention program is causing educational waves. The dropout program is "touching" actual educational institutions. The dropout prevention program will produce change and will bring about reform that will not only touch the particular educational system involved but also educational programs throughout the country.

Mr. President, I believe my statement has made it clear that this is a priority education program. Although it apparently does not have the political muscle of some of the other programs, the results to date are most encouraging. The President of the United States has singled out this program as a priority program and urged the Congress to provide an additional $10 million, the amount provided in this amendment, in his February 2 message to Speaker McCormack.

The dropout prevention program has enjoyed the strong support of the previous administration, and as just indicated, the Nixon administration. It has enjoyed considerable support within the Senate Appropriations Committee. In 1968, the funding of the program was in-

creased to $20 million in a Senate floor vote of more than two to one.

Mr. President, the Senate should overwhelmingly adopt this amendment so that we can bring about badly needed educational reform in this Nation.

I ask unanimous consent that various information relating to the dropout prevention program be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

INSTANCES OF EDUCATIONAL CHANGE THROUGH TITLE VIII OF ESEA

1. *Involvement of Private Business and Industry in the Educational Process:* The Dade County Talent Development Program, Miami, Florida, involves a work-experience program using business and industrial resources such as local meat-packing firms, landscaping firms, office machine firms, etc. IBM is working with the project in providing communication skills to students. Hialeah General Hospital is training attendants and hospital workers. Project STAY in St. Louis has work study programs with McGraw-Hill, Sinclair Oil, Famous Barr Department Store, and several local hospitals. Bell Telephone provides work-study skills with promotion and wage increase as school progress and skills development are shown. In Project KAPS in Baltimore, the C and P Telephone Company and local hospitals are developing communication skills and hospital training for students. The Dropout Prevention Project in Chautauqua, New York includes paid work-experience programs with local supermarkets, summer camps, landscaping firms, etc.

2. *Reform and Renewal of School Structure and Organization:* Each of the 10 funded projects is working toward elimination of unproductive instructional programs, of outmoded curricula, and of facilities which do not yield sought-after objectives. Project EMERGE in Dayton has one component in which students receive special study skills away from the regular school. In Seattle, a newly-organized Personal Development Academy will provide individualized instruction for students with special problems. In Fall River, "microprojects" or small grants will be given to teachers with successful ideas for school improvement. Fall River will also institute an experimental science program, an IPI math program, and a specially-adapted English program to meet the needs of children in that city. St. Louis will provide coordinated after-school activities. Miami will attempt an Engineered Classroom to assist potential dropouts to adjust to regular classes. Baltimore will use home instruction and counseling for sick, retarded or pregnant students. Some teachers in the St. Louis project will provide academic instruction on location of the industrial establishments which involve students in work-study programs. The Texarkana project has brought schools in Texas and Arkansas together to form integrated instructional centers to upgrade the reading and math of students.

3. *Motivating Students Through Rewards and Incentives:* In Baltimore, an Earn-Learn component in elementary schools will allow students to perform tasks for which they will earn points. Pupils will be able to trade points for school supplies, games and toys, and trips. Students who are successful in the Texarkana project will receive coupons to redeem for merchandise. Students who complete two grade levels of achievement will receive transistor radios. In Baltimore, older students will contract with teachers for something they would like to do in exchange for achieving their study objectives.

4. *Relaxing Ancient Traditions which Inhibit State and Local Educational Progress:* In Florida, the conventional 50 minute classroom "hour" will be made flexible to permit varying amounts of time to be spent on different subjects according to individual student need. The 9 to 3 daily schedule will disappear for students with special problems in St. Louis which will permit night classes, special care centers, schools for pregnant girls, etc. Similarly, in New York, clubs will be developed around motivational interests of students identified as high potential dropouts Batesland, South Dakota will establish teacher aides to assist Indian students in appreciation of their culture. New patterns of teacher preparation will emerge necessitating changes on the part of colleges and universities in preparing school staff. For example in Dayton, Ohio, college students with inner-city backgrounds will be hired to assist younger students to stay in school. Technical assistance will be provided through a Dayton-Miami Valley consortium of colleges and universities.

5. *Preparing Students for Realistic Job Education:* In St. Louis, one unit of the work-study component will involve students in house and apartment renovation to provide them with skills useful in construction work. Many of the businesses and industries cooperating with the dropout prevention projects are providing skills which will permit students to later enter these organizations as fully-qualified workers. Florida provides concentrated training on job decorum, positive work attitudes, proper dress, and the importance of being competent in a vocation. Seattle, St. Louis, Dayton, Fall River, Baltimore, New York, and Paducah have intensive pupil personnel services and counseling to better prepare the students for entry into careers and vocations.

6. *Insuring Student Mastery of Curriculum Skills:* New York will develop life-oriented curriculum learning centers to assess student difficulties, motivate the child, and provide remedial training as needed. Special group sessions for alienated students will be tried. The Texarkana project will guarantee raising the reading and math levels of students by two grade levels in specified time. In Baltimore, secondary tutors will be paid to help in raising the achievement levels of younger students. Paducah will establish an intensive Unit Program to provide specialized learning techniques for high potential dropouts. Miami will provide a self-instructional center coupled with part-time work. Seattle will re-structure several schools to provide improved curriculum approaches. In Seattle, small groups will be organized to better work with teachers in designing new approaches to learning. Skills and knowledge to be taught will be organized around things which interest students as in the case of Dayton, which will teach academic skills by analyzing welfare problems.

7. *Insuring Quality and Responsible Teaching:* At least two prime causes of student dropout relate to the teaching ability of staff and to outmoded instructional procedures, both of which may force a student to conform to patterns which he is unable to accept. In Paducah, an Extensive Training Program will help teachers to improve their attitudes toward disadvantaged youth and to assist them in developing improved pupil self-concepts. In Texarkana, a contracting agency will teach teachers to utilize special equipment designed to raise reading and math levels. In Baltimore, a private Institute of Behavorial Research will conduct intensive staff training for elementary teachers. In South Dakota, teachers will be trained to serve as resource agents to provide better instruction. In New York, staff will be trained to develop team concepts in improving curriculum.

8. *Accountability for Results:* Strict concepts of accountability for attainment of stated educational objectives have been accepted by each of the projects for which a grant award has been made. Toward this end, each project has used a portion of its award to secure needed technical assistance not available in the school system. Such assistance has been provided by outside consultants, such as Booz, Allen and Hamilton and Associates; Educational Testing Service; regional laboratories, universities, etc., and has provided aid in assessing school needs, developing specific performance objectives, improving school management, producing evaluation designs, etc. In Dayton, an Emerge Council and a Dropout Prevention Review Board will bring parents and community groups into closer partnership with the school in planning programs and insuring that results will be achieved. In Baltimore, special community aides will establish links between the school and community to improve accountability of both groups. In South Dakota, parent-student seminars will assist the schools in reaching objectives. In Texarkana, an outside contractor will guarantee attainment of stated objectives in reading and math with both incentive and penalty clauses built into the performance contract.

9. *Independent, Tough-Minded Review of Student Educational Payoff (Educational Audit):* For the first time in connection with grant awards for educational projects, the Office of Education is requiring an educational audit for each project funded under the Dropout Prevention Program. The educational audit is roughly analagous to the financial audit and seeks to determine what the federal government is getting, in terms of student learning, for the tax dollar. In addition to intensive program evaluations required on each project, each project will be required to have an educational audit made to verify the results of evaluation. Such educational audit will be done by contract with independent, outside qualified consulting organizations which will examine all aspects of the program in order to identify potential obstacles to attainment of objectives and to offer corrective suggestions. The Office of Education has arranged a series of institutes to provide training for organizations which hope to serve as educational auditors.

SCHOOL DROPOUTS

25 percent of children who enter 5th grade will drop out before high school graduation.

Current national dropout rate is 21.4 percent.

SCHOOL DROPOUT PROBLEM: A NATIONAL CONCERN

High rate of youth unemployment.

Disappearance of entry channels to unskilled and semi-skilled jobs.

Continuous rise in crime and delinquency.

Vandalism and riots in cities overwhelmingly by out-of-school unemployed youth.

Skyrocketing welfare rolls.

Loss to Nation in human resource.

UNEMPLOYMENT

Twice as many dropouts are unemployed as high school graduates.

Jobs requiring high school graduation increased 30 percent while jobs for non-high school graduates workers decreased 25 percent.

Unskilled jobs make up 5 percent of employment opportunities.

Dropouts are last hired, first fired.

CRIME

Dropouts are involved in crime at a rate 10 times higher than high school graduates.

Youth aged 16-24 account for:

27 percent of all arrests.

26 percent of all murders.

34 percent of all manslaughters.

49 percent of all robberies.

50 percent of all rapes.

53 percent all all car thefts.

WELFARE

40 percent of New York public school population is receiving aid to dependent children.

62 percent of jobless fathers of such children have less than 4 years of high school.

42 percent of families earning $2,000 or less have a family head with less than an 8th grade education.

Education and life income

Elementary school:	
Less than 8 years	$189,000
8 years	247,000
High school:	
1 to 3 years	284,000
4 years	341,000
College:	
1 to 3 years	394,000
4 years	508,000
5 or more years	587,000

Mr. COTTON. Mr. President, I commend the distinguished Senator from California for the amendment. There is no program that is better and more needed. In fact, this is one of the two programs that the President wanted and asked for, this one and the experimental schools program, which the House did not take.

I hate to say this, of all people, to the Senator from California, because he has fought long and hard for the impacted area funds for his great State.

Now, when the Senator from New Hampshire was able to assure the Senate that the impacted area funds and the Hill-Burton funds would be left intact, it was with the understanding with the administration that there would be no funds added to the bill after the amendment was adopted by the amendment of the Senator from Missouri (Mr. EAGLETON).

It made the thing so tight that for a while it was thought they could not live with it without skimming some off the impacted area funds. I said that if that was the case, I would simply have to oppose any amendment because I based my word on the fact that we would have to withdraw it.

So, it is such a tight balance that we feel impelled to beseech the Senator from California, important as I think his cause is, and much as I admire him for fighting for it so hard, in order to save the situation and to save the chance of getting the bill signed, I am impelled to ask him to consider withdrawing his amendment.

Mr. MURPHY. I thank the Senator from New Hampshire, and thank him for his expressions of support and appreciation of the importance of the value of this particular amendment. May I ask whether there is a possibility in the conference that this will get the attention of the conferees?

Mr. COTTON. If there is the slightest possibility, and if I can prevail on the people downtown to squeeze a little harder, I assure the Senator from California that I will do my best.

Mr. MURPHY. I thank my distinguished colleague from New Hampshire.

Mr. JAVITS. Mr. President, I wish to testify to the worth of the program, as one who has been very active in the educational aspects of the work of the Senate. The Senator from California has initiated, authored, and developed this program. It is tremendously successful. The leverage is enormous, because they are the key children in this effort. The analogy to narcotics addiction in their case, although there are relatively few addicts, is clear. But it is unbelievable what has been done in this field. It is sad that it must be aborted, even momentarily.

I take great encouragement from what the Senator from New Hampshire has just said. I know how difficult it will be for him to try to solve the problem but I can only add, as one Senator, that if on the administrative side I can find some way to help with the Department, I assure the Senator, too, that I will devote myself to that end because this is one of the worthy new programs in this whole field.

Mr. MURPHY. I thank my distinguished colleague from New York.

Mr. FULBRIGHT. Mr. President, I merely wish to join the Senator from New Hampshire and the Senator from New York, because they mentioned the programs in my State, to thank the Senator from California for what he said about the programs, those in Texarkana and Little Rock. They have been so successful that I hope they can be further expanded, because they have been so effective.

I certainly support the Senator from California in his amendment.

Mr. MAGNUSON. Mr. President, I want to tell my good friend from California that the Senator from Washington and the Senator from New Hampshire made an attempt to add a little more to the program. We did not succeed. We found more opposition on the House side in the first conference that we had than anywhere else. I am hopeful that we can do much better, because the results are beginning to show in these places.

Let me say to the Senator from California that we will, in a matter of almost 40 days, begin hearings on a new bill. Thus, I welcome the Senator from California to come down there and tell us, together with the other people, the results of the program and I think that in next year's appropriation bill we will be able to do some real work in this field, because it is so important. It is the best insurance we will have, because a dropout costs us more when he drops out than it costs us to make this appropriation to see that he does not.

Mr. MURPHY. Mr. President, I thank the distinguished Senator from Washington.

Mr. President, with full confidence in the Senator from New Hampshire and his assurance that in the conference this will get attention, and the statement of the Senator from Washington regarding the new hearings that will begin in 40 days, let me assure him that I will be back with the records and the facts which I think will be a most impressive record.

Mr. President, reluctantly, in order to accommodate the chairman and members of the committee, I withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. TOWER. Mr. President, since I have been a Member of this body, I have supported the programs of aid to education in federally affected areas under Public Laws 874 and 815. These programs may not be perfect in the present forms. They might need some improvement. But there is no need to kill the program in order to take it apart and find out how to make it work better. The precipitous reduction of funding for impact aid programs would certainly be disastrous. The $520 million provided in this bill is almost the minimum acceptable figure. School districts will still feel the pinch, and those with the most severe impact will feel it the worst.

The distinguished Senator from Nebraska is proposing an amendment which would protect these districts with extremely heavy impact from the hardship which they would suffer even at the present appropriation level. The amendment would insure that school districts where 75 percent or more of the students are federally connected will receive 95 percent of their full entitlements under Public Law 874. Districts with such an extreme impact naturally depend more heavily than others on Public Law 874 funds in meeting their educational obligations.

Senator HRUSKA's amendment is appropriate and fair because it directs the funds to the areas of the sharpest need while still providing substantial assistance to areas where the need is less severe but nonetheless real.

Congress has for the past 20 years repeatedly endorsed the concept of aid to education in federally affected areas. Very likely the formula for providing such aid is due for an overhaul. However, the present appropriations bill is not the proper vehicle for bringing about a revamping of the system. We must amend the formula if we want to change the results, but we should not merely adjust the appropriation arbitrarily. I do not mean that we must fully fund every item authorized, but that we must remain substantially true to our announced intent in a matter such as this. For almost 20 years educators across the country have depended on the Public Law 874 program. We cannot cut them off without fair warning.

Recently the impacted aid program has come in for more and more criticism. Perhaps it is appropriate to hold the line now until we can find out what is wrong. The appropriation provided in the present bill is comparable to the amount provided in fiscal year 1969. As I said before, even this amount will not be completely comfortable for school districts. They will feel the pinch. But Senator HRUSKA's amendment will ease the pain where it hurts the worst. On the whole, I feel that this, perhaps, is the best we can do at this time.

Mr. MAGNUSON. Mr. President, before third reading, I ask for the yeas and nays on final passage of the bill.

The yeas and nays were ordered.

The PRESIDING OFFICER. If there be no further amendments to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. All time has now been yielded back.

The question is, Shall the bill pass?

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KENNEDY. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Connecticut (Mr. DODD), the Senator from Michigan (Mr. HART), the Senator from Iowa (Mr. HUGHES), the Senator from Washington (Mr. JACKSON), the Senator from Louisiana (Mr. LONG), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Montana (Mr. METCALF), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Rhode Island (Mr. PASTORE), the Senator from Rhode Island (Mr. PELL), the Senator from Missouri (Mr. SYMINGTON), the Senator from Texas (Mr. YARBOROUGH), and the Senator from Ohio (Mr. YOUNG), are necessarily absent.

I also announce that the Senator from Alaska (Mr. GRAVEL) is officially absent.

I further announce that, if present and voting, the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Connecticut (Mr. DODD), the Senator from Michigan (Mr. HART), the Senator from Alaska (Mr. GRAVEL), the Senator from Iowa (Mr. HUGHES), the Senator from Washington (Mr. JACKSON), the Senator from Louisiana (Mr. LONG), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Montana (Mr. METCALF), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Rhode Island (Mr. PASTORE), the Senator from Rhode Island (Mr. PELL), the Senator from Missouri (Mr. SYMINGTON), the Senator from Texas (Mr. YARBOROUGH), and the Senator from Ohio (Mr. YOUNG), would each vote "yea."

Mr. SCOTT. I announce that the Senator from Kentucky (Mr. COOK), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senators from Oregon (Mr. HATFIELD and Mr. PACKWOOD), the Senators from Illinois (Mr. PERCY and Mr. SMITH), the Senator from Vermont (Mr. PROUTY), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Ohio (Mr. SAXBE) is absent on official business.

The Senator from Nebraska (Mr. CURTIS) is detained on official business.

If present and voting, the Senator from Kentucky (Mr. COOK), the Senator from Nebraska (Mr. CURTIS), the Senators from Illinois (Mr. PERCY and Mr. SMITH), and the Senator from South Dakota (Mr. MUNDT) would each vote "yea."

The result was announced—yeas 69, nays 0, as follows:

[No. 78 Leg.]

YEAS—69

Aiken	Fong	Miller
Allen	Fulbright	Mondale
Allott	Goodell	Murphy
Anderson	Gore	Muskie
Baker	Gurney	Nelson
Bellmon	Hansen	Pearson
Bennett	Harris	Proxmire
Bible	Hartke	Randolph
Boggs	Holland	Ribicoff
Brooke	Hollings	Russell
Burdick	Hruska	Schweiker
Byrd, Va.	Inouye	Scott
Byrd, W. Va.	Javits	Smith, Maine
Cannon	Jordan, N.C.	Sparkman
Case	Jordan, Idaho	Spong
Cooper	Kennedy	Stennis
Cotton	Magnuson	Talmadge
Dole	Mansfield	Thurmond
Dominick	Mathias	Tower
Eagleton	McClellan	Tydings
Eastland	McGee	Williams, N.J.
Ellender	McGovern	Williams, Del.
Ervin	McIntyre	Young, N. Dak.

NAYS—0

NOT VOTING—31

Bayh	Hatfield	Pastore
Church	Hughes	Pell
Cook	Jackson	Percy
Cranston	Long	Prouty
Curtis	McCarthy	Saxbe
Dodd	Metcalf	Smith, Ill.
Fannin	Montoya	Stevens
Goldwater	Moss	Symington
Gravel	Mundt	Yarborough
Griffin	Packwood	Young, Ohio
Hart		

So the bill (H.R. 15931) was passed.

Mr. MAGNUSON. Mr. President, I move that the Senate insist on its amendments and request a conference with the House of Representatives on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer (Mr. EAGLETON in the chair) appointed Mr. MAGNUSON, Mr. RUSSELL, Mr. STENNIS, Mr. BIBLE, Mr. HOLLAND, Mr. COTTON, Mr. CASE, Mr. FONG, and Mr. BOGGS conferees on the part of the Senate.

Mr. MANSFIELD. Mr. President, I commend the able and distinguished chairman of the Labor, Health, Education, and Welfare Subcommittee of the Committee on Appropriations, the senior Senator from Washington (Mr. MAGNUSON). I commend him for his able advocacy. I commend him for his effective legislative skill. And, on this particular measure, I commend him for his tenacity and endurance.

Senator MAGNUSON has now literally been with this funding measure for a number of months.

The delay, may I say, was no fault of his. It was the veto action imposed against the original proposal that occasioned the procedure adopted.

For his work on the proposal, for his splendid guidance and outstanding leadership, the Senate and the Nation as well are deeply indebted to Senator MAGNUSON.

Our thanks goes also to the distinguished senior Senator from New Hampshire (Mr. COTTON). As the ranking minority member of the subcommittee be applied the same strong support and assistance that have characterized his many years of public service. He, too, has literally lived with this matter for a good many months and the Senate is grateful.

We are grateful as well to many other Senators for their contributions. The Senator from Mississippi (Mr. STENNIS), the Senator from Maryland (Mr. MATHIAS), the Senator from Minnesota (Mr. MONDALE), and the Senator from New York (Mr. JAVITS) joined to offer their strong, articulate and most sincere views. Others too are to be commended. The Senator from Virginia (Mr. SPONG), the Senator from Nebraska (Mr. HRUSKA) and many others may be singled out as well.

Quite frankly, it is difficult to express in words my gratitude to the Senate this evening for the outstanding cooperation exhibited by each and every Senator, regardless of point of view or party. It is not an easy task for any one of us to give up commitments, engagements, and the like for the sake of undertaking Senate business on a Saturday evening. I am confident the Senate appreciates the unusual circumstances that prevailed in calling for such a session. Not only did the matter of the Labor-HEW bill remain as a priority item, but on Monday next, by previous order, the Senate already agreed to begin its consideration of the voting rights measure—a most important proposal. Thereafter, the Senate will proceed to the nomination of Judge G. Harrold Carswell to be a member of the Supreme Court. So the workload has been full and the pace lively. It appears that it will remain so in the weeks ahead. I thank the Senate for its cooperation. Our achievements have been many. They will be more.

ORDER FOR TRANSACTION OF ROUTINE BUSINESS

Mr. MANSFIELD. Mr. President, at 7:20 in the evening, I ask unanimous consent that there be a brief period for the transaction of routine business, with a limitation of 3 minutes on speeches.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT FROM MR. GILBERT HAHN, JR., CHAIRMAN OF THE CITY COUNCIL OF THE DISTRICT OF COLUMBIA ON THE PROBLEM OF CRIME IN WASHINGTON

Mr. MANSFIELD. Mr. President, I have received a statement from Mr. Gilbert Hahn, Jr., the Chairman of the City Council of the District of Columbia. It is a response to remarks which I made recently in the Senate on the problem of crime in Washington. It will be recalled that I asked the city's leaders to direct their energies to this question. I urged them to concentrate on crime in the streets because unless these essential channels of human contact are freed from terror and restored to reasonably safe usage in all segments of the District, there is little hope of restoring the shattered communal life of the Nation's Capital. To that end, I suggested that the Mayor, the Police Chief, and other city authorities come up with a plan to cut street crime 50 percent in the near future.

In his statement to me, Mr. Hahn has written a very thoughtful analysis of the situation. He discusses both the immediate aspects of the problem of crime

and also cites some relevant long-range considerations. Of the remedies which he proposes, Congress has already enacted some into legislation, at least in part. May I add that so far as I am aware, every Presidential proposal for legislation directed against crime in the Nation's Capital has already cleared the Senate.

One major proposal in Mr. Hahn's statement has already been partially enacted into law by both Houses but even that part awaits effective administration by the city government. I refer to the size of the police force. Mr. Hahn believes that the District of Columbia police should number 6,000. The President and the Congress have provided for 5,100 men but the recruitment policies and techniques of the city authorities so far have produced a force of only 4,500. I would hope, therefore, that more vigorous efforts will be made by the city authorities—and I am sure they are—to fill the complement already authorized and to use this force with full effectiveness against street crime. There would then be a basis for considering Mr. Hahn's suggestion for additional expansion to a 6,000-man force.

In all frankness, I must say that it is difficult to justify a further increase in the authorized number at this time if the city officials are unable to enlist those for which provision has already been made. I do not see that salary is the main problem at this time. The starting pay has been raised to $8,000 and compares favorably with that in all parts of the Nation.

Mr. Hahn's statement also refers to such remedies for the problem of street crime as increasing the number of judges and other court personnel, attacking the drug problem and seeking to combat juvenile delinquency through more jobs, better schools and vocational training. The statement, as I have said, has a great deal of merit and I would hope that every attention will be given to it in all quarters.

However, the immediate need, as I see it, is for Mr. Hahn to translate the general approaches which are suggested in his statement into specific proposals for action. Then, from the point of view of the Senate, the administration should clarify—spell out in proposed legislation—what portion of them is sought from this body.

I reiterate what I said the other day, if there is anything further which is needed from the Senate at this time to cut the street-crime rate drastically, President Nixon and the District of Columbia authorities should state that need. If they will send their legislative proposals to the Senate, they will have not only my attention but, much more significant, they will have, I am confident, the full consideration of the appropriate committees and the Senate as a whole.

I hope the Chairman of the City Council will consider this matter with his colleagues in the District of Columbia government and with the President, without delay.

Mr. President, I also had a chance to talk with the Mayor, the Honorable Walter Washington, who is cognizant of the situation which confronts him in this matter. I found him to be most cooperative and understanding.

In the interim, Mr. President, I ask unanimous consent that Mr. Hahn's statement be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

GOVERNMENT OF THE DISTRICT OF COLUMBIA, CITY COUNCIL,
Washington, D.C., February 24, 1970.

Hon. MIKE MANSFIELD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MANSFIELD: In response to your Friday statement, here are a few thoughts of mine for curbing crime in the District of Columbia.

Very sincerely,

GILBERT HAHN, Jr.
Chairman, City Council.

REPLY TO SENATOR MANSFIELD

Senator Mansfield has, as he did Friday, repeatedly challenged the District of Columbia leadership to come up with a program for reducing crime in the District of Columbia by 50%.

I have a four point, short term program for attack on the problems of crime, which I hope the Senator will support. These are not, for the most part, new or radical.

An attack on the hard drug problem, particularly heroin addiction;

An attack on juvenile delinquency (which accounts for over 50% of all crime) through jobs, better schools and vocational training;

An end to delays in trials and the whole administration of justice from arrest to rehabilitation, as well as a simplification of trials; and

A further increase in police presence and the sophistication of the criminal enforcement process.

We do not know all the causes of crime—nor can we be sure we know even what some of the cures are. We can only be sure that crime will start to come under control and diminish when most of society—that is to say all of us—want crime to end. And, no amount of police, judges, jails and money can have more than a partial effect on crime until all of us want crime ended.

What I say here is for the short term only and is not in place of long range programs. I support the belief that bad housing, bad environment, bad schools and a lack of jobs, as well as many other social ills that require improving contribute to the climate of crime. I support massive programs of social reforms, because they are right and because logically inequality of possession and inequality of opportunity in an open society ought to be a long term and basic contributor to crime.

Almost two years ago, I made a speech, following a door-to-door election campaign through the City in the Winter and Spring of 1968. I then found that the uppermost thought on the mind in the City was fear of crime.

At that time, with relation to the short term solutions to crime, I said that we should emphasize two solutions: one, an increase in the number of police and the other to speed the administration of justice.

Then, I said that the District of Columbia police force should be doubled, from its then level of 3,000 to 6,000. A good deal of progress has been made in this one area. President Johnson pushed the authorized strength to 4,100 and President Nixon to 5,100. The force actually now stands at about 4,500 and is being increased in numbers and sophistication. Its leadership under Chief Jerry Wilson is excellent; and it has successes such as its handling of the November 15, 1969 protest march on Washington to its credit. We hear less now about police brutality and community complaints about police. This is good. The community seems now, for the most part, to support the police. To the extent that we have slowed down the rise of crime in the City, the increased police force must take the largest credit. We must, I think, continue to increase the force to 6,000 men and complete the upgrading of training and sophistication of the police that I called for in 1968.

If we are to cope with the rising tide of crime and maintain our liberal tradition of arrest by warrant, search by warrant, rapid arraignment before a magistrate, immediate availability of counsel, lack of resort to forced confessions, and all the rest of the desirable safeguards built into our system of administration of justice at the level of arrest and pre-trial procedure, then we have no option but to continue to increase the number of police and the sophistication of their training and equipment.

At the same time, in 1968, I called for a doubling or tripling of the number of judges in all courts, court aides, probation officers, psychiatrists, prosecutors on all levels. For I felt then, as I do now, that an increase in the police presence would have a limited effect without speedy trials. In this respect, there has, as yet, been no significant increase in the judges, courts, prosecutors, court personnel or indeed the penal system.

President Nixon has proposed a new Superior Court which would increase the number of judges from 27 in the Court of General Sessions to 50 in the new Superior Court, and a corresponding increase in personnel. This bill, passed by the Senate, has yet to be favorably considered in the House. And the House District Committee has proposed reducing the number of judges from 50 to 40. Whatever reasons there are for opposition in the House, they should be put aside to permit President Nixon to appoint 23 additional judges into our judicial system and to add to other needed court personnel, including prosecutors.

The Court of General Sessions has a backlog of 2,000 criminal cases.

There is a two to three thousand criminal trial backlog in the District Court, with delays in trials running up to a year, even though there has been some recent improvement. Our system of release without money bail prior to trial, certainly just to the individual defendant, becomes a destroyer of justice and a danger to the community, when it contributes to deliberate delays in trials, a diminution of guilty pleas in proper cases and a rising volume of jury trials.

I see no alternative but a drastic increase in the number of judges and an emphasis on current trials. The present proposal for pre-trial detention, which appears to have adequate safeguards for the rights of defendants cannot be a substitute for enough judges to try every case within a few weeks.

Men out of jail, awaiting trial for 6 to 18 months cannot usually get or retain gainful employment—and we are not doing them or society any service by permitting this situation to continue.

Bad as the situation is in District Court, in our Juvenile Court it is even worse. There is a 6,000 backlog of juvenile cases, with a typical length of time of 18 months from arrest to trial. Nothing is as devastating as delay in the disposition of juvenile cases, particularly a youth's first confrontation with a Court. Even if the Court reorganization plan were to be adopted tomorrow, merging Juvenile Court with the Court of General Sessions, the backlog will rise to 10,000 cases and an increase in delays of juvenile trials.

As I said in 1968, in a proper attention to providing deserved protection for defendants, the right to counsel, jury trials, insanity defense, evidentiary protections, we have made the administration of Justice cumbersome and time-consuming and failed

to provide the necessary additional judges and other personnel—or the simplification of the system to make it work.

To make both of these improvements that I recommended in 1968, doubling the police force and doubling the number of judges and courts, I estimated the additional cost to be $50 or $60 million. I see nothing to change my mind about the need for these reforms. We must be prepared to make these changes and pay the cost.

Since two years have gone by, and since my experience of a year as City Council Chairman. I have two more points that I think must rank with doubling the police and doubling the courts as essential to the war on crime.

These are drug addiction and juvenile crime.

Within the past few years, drug addiction, especially heroin addiction has come onto the Washington scene, like a nightmare. It appears we may have in Washington from 5,000 to 15,000 hard drug addicts. Some evidence indicates that half of all arrested suspects are hard narcotics addicts. Although we have no way of knowing this for certain, the number is obviously large and growing.

What is worse still is the compelling evidence that the use of hard drugs is widespread in our high schools. We know little of what the attraction is to become addicted, other than that the criminals peddling narcotics encourage it for profit, or that the young try it because their friends do it. We know no proven way of curing addicts once they have become addicts, at least not in any significant numbers—and we are entirely at a loss as to where to begin. We have no successful way of persuading people not to experiment with drugs.

We do know that it apparently takes $45 to $50 a day to support a heroin addiction "habit". We can assume in almost every case that the addict is either stealing money or property to support his habit or selling narcotics to others. If he is stealing property, we believe it takes about 2½ times the $45 to $50 to get the money. Multiply this by 365 days a year to see the damage to society of a single heroin addict. These are figures provided by Senator Joseph Tydings of Maryland.

We are years behind such cities as New York in our programs for providing treatment and counselling for addicts, especially the young of the community. Supported by President Nixon, the Mayor has proposed a unified program, using the resources of the health and police departments to attack drug addiction and to provide 200 hospital beds for treatment.

I would propose to implement a bold program suggested by Senator Tydings for the massive use of testing. Urine testing can now establish the presence of heroin. The use of the test would enable the community to identify the addict—and, being identified, it would enable us to know that person presents a danger to the health, safety and welfare of the community as well as himself.

I would propose that we implement Senator Tydings' suggestion that every person, adult or juvenile, on bail awaiting trial, every person, adult or juvenile, on parole or on probation, should be required as a condition of bail, parole or probation to submit to these tests at frequent intervals—weekly if necessary. Certainly, none of the methadone programs, either public or private, should be carried on without testing.

I believe the City Council could pass regulations requiring such testing within its regular police powers to protect the public health, safety and welfare and I would hope that Senator Mansfield would support us. And I propose that the City Council, while it has the 1971 Budget before us, reorder its priorities to provide for massive urine testing immediately.

Finally, in the area of juvenile crime. Again, we know only that juvenile crime and disorders are mounting, both on the streets and in our schools. As I have said before, we have seen that the Juvenile Court has a 6,000 case backlog that will rise to 10,000 cases, even if new judges and court personnel are authorized tomorrow—and we have seen that rapid rise of hard drug addiction, especially among the young that appears to cause almost one-half of our crime.

There is no doubt that crimes by juveniles, whether related to drugs or not, account for half of all crime and the proportion is steadily rising. An increase in judges and police is not alone the answer to juvenile crime.

In addition to the drug problem, which I have discussed above, I would offer two other suggestions in the area of the juvenile crime. After the emphasis that I place on curbing the use of drugs as a cure for juvenile crime, the second emphasis I place on jobs for the young and third on the schools.

The world of the young today—and here I mean from the age of 13 years up—is no longer related to athletics and recreation alone as a use for time out of school. The typical young man or woman of that age wants a job and he wants money. Where a child of ten or twenty years ago could exist in society without money in his pocket, this is no longer the case. And, we have to find a way to satisfy this drive. Much has been done in terms of summer jobs, but much more needs to be done. But that is not all. The need is there for employment the year round—and it has to be satisfied.

We do not yet know the cost of such a program, nor can we calculate its cost, until we find out whether or not the private sector of the economy can support such a program. But, we hope that as we expand this program that Senator Mansfield will support us in this area.

We already know about the critical failures in our school system. Enough has been said of the money needs to bring the academic quality of our schools not only to an acceptable level but an outstanding one. But, we need to go beyond the academic.

Our schools may need to work in new ways to meet the problem. While we are doing much in our schools to improve academic skills, we may be neglecting a substantial need for vocational training and opportunity for those who prefer it. I call attention, for example, to a small experiment, funded by Secretary Romney's Department of Housing and Urban Development. This has been the training of 25 young men, living in public housing to learn housing repair and management skills, provided they remain in school. Having initiated this program, I am proud that it has been spectacularly successful. I would hope that this kind of program could be introduced into the school system and enormously expanded.

There are many other similar kinds of programs that could be added to the schools to meet this need. It will be expensive. I would hope that Senator Mansfield would support these programs when they are presented.

As a leader of the District Government, that is the four point program that I propose to Senator Mansfield: an increase in the police force to 6,000; a doubling or tripling of the number of judges and other court personnel to end delays in trials and the administration of justice; an attack on hard drug addiction especially heroin; and an attack on the problems of juvenile delinquency, with programs for jobs for juveniles and improved schools and vocational training.

ORDER FOR ADJOURNMENT UNTIL 11 A.M. MONDAY, MARCH 2, 1970

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 11 o'clock on Monday morning next.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS ON MONDAY NEXT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Monday morning next following the speech by the Senator from Arizona (Mr. FANNIN) there be a brief period for the transaction of routine morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that Senators may be permitted to make statements during that period for the transaction of routine morning business and that such statements be limited to 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF ROUTINE BUSINESS

Mr. BYRD of West Virginia. Mr. President, is there further routine business?

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

PROGRAM

Mr. BYRD of West Virginia. Mr. President, before moving to adjourn, for the information of Senators I wish to recapitulate the previous orders procured by the majority leader.

Pursuant to the order of the Senate, there will be an adjournment until 11 o'clock on Monday morning next.

Following the prayer and the disposition of the reading of the Journal on Monday morning next, the Senator from Arizona (Mr. FANNIN) will be recognized for not to exceed 1 hour.

Following the address by the Senator from Arizona there will be a brief period for the transaction of routine morning business with statements therein limited to 3 minutes.

Following the period for the transaction of routine morning business on Monday morning next, the Presiding Officer, pursuant to the order of Tuesday, December 16, 1969, will lay before the Senate the bill (H.R. 4249) to extend the Voting Rights Act of 1965, and the bill will be made the pending business under the order of December 16, 1969.

ADJOURNMENT TO 11 A.M., MONDAY, MARCH 2, 1970

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 11 o'clock on Monday morning next.

The motion was agreed to; and (at 7 o'clock and 22 minutes p.m.) the Senate adjourned until Monday, March 2, 1970, at 11 a.m.

EXTENSIONS OF REMARKS

A BOUNTIFUL LAW REVIEW

HON. LEE METCALF

OF MONTANA

IN THE SENATE OF THE UNITED STATES

Saturday, February 28, 1970

Mr. METCALF. Mr. President, for some years now the problem of abuses of the special farm accounting principles has had my consideration. During this period, I introduced several bills and consulted with both farm and labor groups, as well as individual tax experts. One of the experts to whom I refer is particularly qualified in this area. He is Charles Davenport, who served as the farm tax adviser within the Treasury Department at the time a favorable report was issued on my original proposal back in July of 1968. He served in the same capacity when the Treasury Department conducted a detailed study into needed areas for tax reform during the last 2 years of the Johnson administration. That study which adopted the loss limitation approach contained in my bill, S. 500, was the basis for lengthy hearings held last session on the subject of tax reform. Unfortunately, the present administration failed to take advantage of his particular expertise in this area and in August of last year, Professor Davenport left the Treasury to become a professor of law at the University of California.

Professor Davenport has since published an article which appeared in the Texas Law Review which discusses the problem of tax-dodge farming at great length. This article was written prior to the Senate's final consideration of this problem. However, Professor Davenport did have available to him the press release of October 17, 1969, at which time the Senate Committee on Finance announced its decision to adopt a modified version of my bill but with what I considered to be excessively high dollar limitation figures. Professor Davenport termed the action taken by the Senate Finance Committee as "at best a very poor substitute for Senator METCALF'S bill."

The issue as to the comparative effectiveness of the committee's version versus my bill has since been joined with the result that when the bill went to conference, the Senate conferees receded from any form of loss limitation approach and instead adopted the administration's EDA proposal which in effect says to the tax-dodge farmer: Take your artificial farm losses as deductions from your nonfarm income now and we will attempt to recapture the revenue lost at some future date of your choice.

Professor Davenport's article meticulously explains why he has chosen the approach contained in my bill, S. 500, over the EDA approach adopted in the final version of the Tax Reform Act of 1969. Already, farm and labor groups have begun to express to me their displeasure over the final outcome of reform efforts in this area.

Mr. President, because I intend to renew my efforts in this area in the future and because of the excellent analysis of the problem now available to us in the form of this article, I ask unanimous consent that Professor Davenport's article be printed at this point in the RECORD.

There being no objection the Texas Law Review article entitled "A Bountiful Tax Harvest," was ordered to be printed in the RECORD, as follows:

[Reprint from December 1969, issue of the Texas Law Review]

A BOUNTIFUL TAX HARVEST

(Professor Davenport traces the development of the "farm loss" inequity and analyzes the possible remedies. He meticulously examines the proposed solutions now before Congress, explains why he favors Senator Metcalf's Bill, and expresses his fear that division within the ranks will defeat reform.)

(By Charles Davenport, acting professor of law, University of California at Davis. A.B., 1954, Chico State College; LL.B., 1957, Harvard Law School)

I. INTRODUCTION

The nation's income tax law takes its form from its various architects. Congress has the initial chance to structure it. Then the Treasury promulgates regulations. These sources are subsequently interpreted by the courts in deciding cases and by the Internal Revenue Service in many administrative proceedings. Each institution is undoubtedly reacting to a peculiar set of pressures and to special arguments being exerted at the moment. As a consequence, the law at any time may be something that just happened. It is not surprising that a system growing like Topsey may sometimes reach a topsy-turvy result.

At this writing, several industries, notably oil and gas, real estate, perhaps timber, and some farming, offer this opportunity. This paper, however, is limited to the "farm loss" problem, but it seems likely that the conclusions and analytic techniques set forth are equally applicable in any case in which premature deductions are allowed for the cost of assets, while also conferring capital gain treatment on the sales proceeds to the extent they exceed any basis the property may have. Thus the conclusions and techniques discussed herein might just as easily apply to depreciation on real estate unless this deduction is sharply reduced by the current tax reform proposals.

The "farm loss" problem arises from the deduction of capital costs while allowing sales proceeds to be treated as capital gain. We shall first trace briefly the development of the tax law in agriculture to ascertain just how we got where we are. Then we shall turn to a demonstration of the benefits afforded by the tax law. Thereafter the areas of principal application shall be outlined, and finally some solutions currently proposed will be evaluated.

II. GROWTH OF THE TAX HARVEST

A. A seed is planted

One root of the farm problem lies in a number of administrative decisions made very early in the game. A Treasury Decision [1] in 1915 and regulations issued under the Revenue Act of 1916 [2] provided that the farmers could report their income on either the cash or accrual method of accounting. More importantly, the same authority gave the farmers permission to dispense with accounting practices employed by other businesses and permitted them to deduct livestock-raising costs even though they were capital expenditures.

This decision seems to have been prompted by several considerations. First, since the identification of specific costs attributable to particular animals on hand at year's end would have been very difficult, the easy answer was to ignore such costs. Furthermore, the accounting principles of the time appear to have been unsophisticated and unprepared to deal with the problem of segregating and capitalizing costs associated with livestock Finally, there was undoubtedly some notion that the average farm did not represent the type of investment or financial acumen usually found in other business operations. To ask that expensive accounting techniques be employed would not only have overburdened the investment, but would also have overtaxed the farmer's financial management capacity.[3] In a sense, farms were just not considered businesses.

These early regulations also addressed themselves to the amounts incurred in the development of orchards and ranches. Contrary to the rule for livestock, the initial regulations required these costs to be capitalized.[4] Presumably, the inconsistency of allowing livestock farmers an immediate write-off while requiring capitalization of development costs of orchards and ranches was raised, and the issue was resolved for deductibility of both kinds of expenses when the next regulations were issued in 1919.[5] Case law stemming from this era indicates that, left to its own devices, the judiciary would have reached contrary results for those development costs.[6]

When these liberal rules, the expensing of raising and developing costs, were formulated, they had but one effect on tax liabilities. The deductions were premature and created artificial tax losses, which would not have arisen had the costs been properly capitalized. These artificial tax losses offset income from other sources and permitted a deferral of tax liabilities on other income until the farm assets were sold. This gross mismatching of income and expense could be tolerated when tax rates were relatively low. They became quite another matter when, as later explained, they combined with very high ordinary income rates and lower capital gains rates on many farm assets.

The point of recounting the historical is that these liberal accounting rules were developed by an administrative agency under a statute requiring that income be properly reflected. While expediency might be their chief justification, there is nothing to indicate that their impact as a stimulant for investment in farm assets was ever considered. Indeed, that consideration would have been improper. Furthermore, it is doubted that they originally had any such effect; instead, they dealt with difficult accounting problems.

B. The flower blooms

Congress discovered capital assets in the Revenue Act of 1921. It did not see fit, however, to include within that category depreciable property used in the trade or business. We were later told that this property had been excluded in order to assure full deductibility of losses.[7]

Whatever the reason for excluding these assets from the preferred treatment, World War II brought forth a rash of condemnations, destructions, and sales of depreciable property that had appreciated substantially. To prevent virtual confiscation of such appreciation by high wartime rates, Congress conferred capital gain on depreciable property used in the trade or business but pre-

Footnotes at end of speech.

served full deduction of losses realized on this property.[8] While the House specifically excluded real estate from the preferred dual treatment, the Senate added real estate and its improvements—largely to assure that losses on sales of plants and the like would be fully deductible.[9]

Although the Commissioner of Internal Revenue sought on several occasions[10] to compel a contrary result, farmers considered their breeding animals to be property used in the trade or business and applied the new rules to their own benefit. The ensuing controversy was settled in favor of the taxpayers in *Albright v. United States*,[11] when the court found that all the culls[12] from a dairy herd were property used in the trade or business and that sales proceeds therefrom qualified for capital gain treatment.

Even with this victory, the livestock interests were concerned that administrative practice might not be so lenient as the cases and in 1950 urged the Senate to legislate on the subject. These efforts failed,[13] but a renewed fight in 1951 moved Congress to clear up any uncertainties by enacting the predecessor of the Internal Revenue Code of 1954 section 1231(b)(3) in the Revenue Act of 1951.[14] The explanation of the Act also made clear that the animals' basis for gain was to be determined under the taxpayers' method of accounting.[15] That is, a cash basis taxpayer would have no basis for raised animals, and the entire sales proceeds would be capital gain. A taxpayer who capitalized or inventoried costs would use this basis and have gain only to the extent proceeds exceeded his basis.

The adverse effects of this legislation were noted in a letter from Secretary of the Treasury Snyder to the Chairman of the Senate Finance Committee on June 27, 1952.[16] This is the first statement of the taxable income distortions that occur from permitting capital costs to be deducted while permitting proceeds to be treated as capital gain. As has often been the case, the mechanics of creating a tax loss that offsets income otherwise taxable at ordinary rates were accurately described, but the full tax consequences were not sharply delineated.

Again, recounting the legislative history of the capital gain aspects of the problem has a purpose beyond the historical. That purpose is to lay to rest the notion that the provision had any design other than to limit the tax on sales proceeds. There is nothing to suggest the limited tax rate was to produce the effect described in the next section of this paper. Furthermore, the farm industry wanted treatment equal[17] to that accorded other industries. The industry argued that the aged cow was the equivalent of machinery scrapped by the manufacturer. Both were claimed to be entitled to capital gains on sale. There is nothing in this history to suggest that Congress was purposefully subsidizing, in a rather haphazard manner, certain segments of the farm industry. Congress intended only to give farmers relief generally granted others.

With this historical note we can turn to demonstration of the negative tax impact.

III. HOW THE PRINCIPLE OPERATES

The problems in the farm tax loss area are described in various ways. The Treasury may point to the offsetting of farm losses against other income or to the creating of tax profits when there are no economic profits. Others write about "hobby farming."[18] These descriptions are not satisfactory, and the scope of this paper is not so narrow. Rather, this paper is concerned largely, but not solely, with the negative tax rate that may be applied to farm *profits*.

What is a negative tax rate? A positive income tax rate takes a part of a taxpayer's profits and puts them in the Treasury. A negative tax rate, on the other hand, takes dollars from the Treasury and puts them in the hands of citizens, just as a spending program does. In the analysis that follows, this latter process is shown to flow from the conferring of capital gain treatment on the sales "proceeds" of assets, "proceeds" that are created by expenses, which may be fully deducted when paid.

The negative tax affect may be fully demonstrated by the following five cases. In each case, the asset sold is assumed to have no basis because its costs have been fully deducted, and as a consequence, the entire sales proceeds are given capital gain treatment. The cases are:

Case No. 1. An economic loss is incurred.

Case No. 2. An economic breakeven is reached.

Case No. 3. An economic profit is realized, but the profit margin is less than 100 percent of cost.

Case No. 4. An economic profit is realized, and cost is 50 percent of the selling price.

Case No. 5. The same as Case No. 4 except cost is less than 50 percent of sales proceeds.

The economic and tax reporting of these cases would be as follows:

CHART A

	Economic reporting			Tax reporting		
	Sales price	Cost	Economic profit or (loss)	Ordinary loss[19]	Taxable[20] ½ of capital gain[21]	Profit or (loss)
Case No. 1	80	100	(20)	100	40	(60)
Case No. 2	100	100	0	100	50	(50)
Case No. 3	120	100	20	100	60	(40)
Case No. 4	200	100	100	100	100	0
Case No. 5	250	100	150	100	125	25

In each case, the ordinary tax loss may be fully offset against other nonfarm income while only one-half of capital gain is subject to tax. The result is that if the taxpayer has other income against which the loss may be deducted, taxes on this other income will be reduced by the amount of the loss multiplied by the taxpayer's marginal tax rate. The taxpayer will, however, incur a tax on the gain that may never exceed more than 25 percent of the entire capital gain.

The consequences of this reporting may best be illustrated by reference to four taxpayers having the different marginal tax brackets of 0 percent, 30 percent, 50 percent, and 70 percent. The assumption of a 0 percent bracket is valid only if the taxpayer has no other taxable income. Except in the case of the 0 percent taxpayer, the tax on the gain is less than the benefit of deducting the loss from other income. The net benefit or payment from the Treasury to the taxpayer is the difference in the value of the loss and the liability for the capital gain tax.[22] Specifically, the size of the payment or reduction of other taxes after giving effect to the capital gains liability is in each case as follows:

CHART B

[In percent]

	Effective tax rate on additional income			
	0	30	50	70[23]
Case No. 1	0	18	30	50
Case No. 2	0	15	25	45
Case No. 3	0	12	20	40
Case No. 4	0	0	0	20
Case No. 5	(24)	(7.50)	(12.50)	7.50

Chart B is the net tax benefit to each taxpayer. This amount should be added to the economic net return to ascertain the overall dollar gain for each taxpayer. When this is done, the total aftertax dollar profit in each case to taxpayers in various tax brackets would be:

CHART C

[In percent]

	0	30	50	70
Case No. 1	(20)	(2)	10	30
Case No. 2	0	15	25	45
Case No. 3	20	32	40	60
Case No. 4	100	100	100	120
Case No. 5	[25]150	142.50	137.50	157.50

These charts permit a number of observations:

(1) There is no taxable income until the economic profit is at least as much as the cost (See Chart A, Case No. 4). Any profit beyond that is taxed at no more than the applicable capital gain rate (See Chart B, Case No. 5, 50 percent taxpayer).

(2) If there is no other income, the tax rate is never less than zero; in other words, the taxpayer receives no refund or abatement of taxes on other income (See Chart B, 0 percent taxpayer column).

(3) If there is other taxable income,[26] the interplay of ordinary deductions and capital gain produces a negative tax rate until the profit is as great as cost (See Chart B, Cases No. 1, 2, and 3, 30 percent and 50 percent taxpayers).

(4) The taxpayer who pays the alternative tax on capital gains continues to receive a negative tax benefit even though profit exceeds cost. This negative tax benefit does not disappear until the ratio of sales price to cost exceeds the ratio of the marginal ordinary income tax rate to the capital gain rate (See Chart B, Cases No. 4 and 5, 70 percent taxpayer).

(5) To a taxpayer without other income, his tax rate is the same regardless of profit margins until his sales price is twice his cost (See Chart B, Case No. 5, for 0 percent taxpayer).

While the foregoing appears generous in the extreme, one other potential benefit has not been mentioned. It arises when the costs are incurred and deducted in years before the sales proceeds are realized. For example, in Case No. 3, the 50 percent taxpayer who deducts the $100 of costs in the first year reduces his taxes on other income by $50. If the income is not realized until later years, this $50 is an interest-free loan from the federal government to the taxpayer, which is wholly or partially repaid when the income is realized and subjected to tax. This benefit exists apart from any differential in tax rates. Even if the sales proceeds are fully taxed as ordinary income in a later year, the taxpayer has had a substantial benefit from the premature deduction of capital costs.

This note on deferral completes the analysis, and for the purposes of this discussion, we can now specify that the progeny of fully deductible costs and capital gain income are three in number. First, is the opportunity to defer taxes on other income by deducting costs before realization of the income produced by them. This is the *deferral* benefit. Second, in some circumstances, an economic profit bears no tax at all. This occurs when the sales proceeds, fully reported as capital gain, are not more than twice the amount of the deducted costs. This is the *exemption* benefit. Third, in some cases

Footnotes at end of speech.

the tax saving resulting from the deduction of the costs is greater than the tax paid on the sales proceeds at capital gain rates. This occurs in all cases in which (1) there is other income, noncapital gain income, to absorb the deducted costs, and (2) the ratio of the sales proceeds (taxed only at capital gain rates) to the costs does not exceed the ratio of the marginal ordinary income tax rate to the capital gain tax rate. This is the majority of cases. The difference between the tax saving produced by the deduction and the tax paid on the sales proceeds is, in effect, a *payment from the Treasury* to the taxpayer. This payment varies in proportion to the taxpayer's tax rate. It is thus a kind of a *negative income tax*. It can be argued that the negative income tax is just an extension of the exemption benefit. That is, the deducted costs exempt not only the income produced by them but other income as well. While there is some merit to this argument, the division between the exemption benefit and the negative income tax will become more meaningful in the discussion of pending legislative proposals.

It seems appropriate now to narrow the area of our discussion by considering the cases in which the opportunity to realize these benefits arises.

IV. THE GREENEST PASTURES

While there are other avenues of abuse [27] in the farm field, the investment literature suggests that the potential for artificial farm tax losses arises largely in two areas: (1) the growing of trees, vines, and other plants having a relatively long life and producing annual crops, and (2) the raising of livestock. The purpose in both cases is the deduction of capital costs followed by sale at capital gain rates. There are differences in the two operations, but in each, the virtual impossibility of turning a tax profit is the same.

A. Development costs of plants

A number of crops, principally fruit and nuts, are produced by trees or vines only after a substantial development period.[28] The cost of planting them must be capitalized. Under the Treasury's regulations,[29] however, all of the costs thereafter incurred prior to the time that the plant is a commercial producer may be deducted currently. Since the planting costs are relatively insignificant,[30] the major portion of all costs incurred in the preoperation stage may be deducted and may create losses, which can offset ordinary income from other endeavors. When the commercial bearing state is reached, a wise taxpayer may sell out, and his gain will ordinarily be treated as capital gain because the property will be considered as property used in the trade or business. It should be noted that this results from the general language of Code section 1231 (b) (1) and not from the special provision added for livestock in 1951.

For example, a taxpayer may purchase ten acres of land and plant it with orange trees. The cost of the land and planting may be assumed to be $12,000. The orange trees will not bear fruit until the seventh year, but during the development period, annual costs of perhaps $1,500 may be incurred for irrigation, cultivation, pruning, spraying, and other care of the trees. By the end of the sixth year, the taxpayer will have incurred "cultural practices expenditures" [31] of $9,000. These expenditures may be currently deducted against other income. To a taxpayer in the 70 percent bracket, the deductions over the years will have reduced his taxes on other income by $6,300. If the grove is sold early in the seventh year at an economic profit of 10 percent, the taxpayer will realize $23,100. His basis, however, will be only $12,000, and he must pay a capital gains tax on the difference between his basis and the sales price, amounting to $2,775.[32]

The net economic profit is $2,100 [$23,100 sales price, less $21,000 of costs ($12,000 land and planting costs, plus $9,000 cultural practice expenditures)]. But the taxpayer also realizes an additional *tax profit*. The tax benefit from deduction of cultural practices expenditures was $6,300, and the tax cost of the sale was $2,775. The taxpayer thus has a *tax profit* (money paid to him by the Treasury's reducing taxes on other income) of $3,525. There is an overall profit of $5,625, consisting of an economic profit of $2,100 and a *tax profit* or subsidy of $3,525.

B. Livestock

Livestock also presents an opportunity to realize substantial tax profits from an economically profitable operation. Raising costs also qualify for current deduction.[33] If, however, the livestock are breeding, draft, or dairy animals, they qualify for capital gain treatment if held for more than twelve months.[34]

Since "culls" from a breeding herd are characterized as breeding animals, they are also entitled to capital gain.[35] A large part of the farm product may fall into this category with the result that a very significant portion of the total receipts from the operation is reported as capital gain.

While many animals are classified as livestock,[36] cattle appear to offer the widest avenue to escape taxes: For example, a taxpayer may have a herd of ten cows. They have produced ten calves (average would be about eight and one-half or nine) for several years, one-half of which are bull calves. The cost of keeping an animal for a one-year period is $100, so that expenses for the ten cows are $1,000. The five bull calves are sold soon after birth for $40 each, and the proceeds are reported as ordinary income. The five heifers are retained for breeding purposes. The herd will therefore increase unless five of the cows are sold. If the taxpayer has been in business several years, he may have old cows or he may have young heifers of the prior years. In either event, he can cull five animals from his breeding herd and sell them at capital gain rates. Assume that the culls sell for a total of $900. Thus the economic profit for the year is $100, a 10 percent profit margin. If this is all that occurs and if we ignore the alternative tax, the taxpayer will report the following:

Proceeds from culls (as reported as capital gain)	$900
Less section 1202 deduction (capital gains)	450
	450
Add proceeds from bull calves	200
Total adjusted gross farm income	650
Farm expenses	1,000
Farm tax loss	350

Since there is a crop each year, the same pattern may be repeated year after year.[37] In a properly operated breeding operation, a tax profit will never be reported. In addition, a taxpayer in the 50 percent bracket who has dividend income to absorb this $350 loss will be relieved of $175 in taxes on the dividend income. It is this benefit that is his negative income tax.

In these selected areas of agriculture, the problem of the "farm loss" is confronted in its most extreme. Quite clearly, the problem is neither one of hobby losses nor of the gentleman farmer, both of which have received extensive treatment. The problem is not so subtle. Rather it is one of combining the deduction of capital costs with capital gain on sale. Even though the activity produces an economic profit, there is almost no prospect that it will produce a profit for tax purposes because a profit is not reported for tax purposes until the economic profit is as great as cost. The results are (a) a deferral of taxes, (b) an exemption of profits from tax, and (c) a negative income tax.

These results are irrational in a system designed to impose a tax on profits. Congress is not likely to have intended them. But neither the irrationality nor the lack of design assure its removal, a matter to which we now turn.

V. THE IDEAL SOLUTION—ACCRUAL ACCOUNTING AND FULL COST CAPITALIZATION

The farm loss problem has received much attention in recent years, and a number of solutions have been proposed.[38] In this author's view only three present even feasible approaches. One goes directly to the problem and recommends accrual accounting and full cost capitalization. It may be the ideal solution. The other two appear to have as their purpose an elimination or reduction of the negative tax on total farm profits while not entirely doing away with cash accounting or capital gain, at least for "real" farmers.

The accrual accounting and full cost capitalization suggestion has much appeal and has been discussed at length,[39] but a few further words may be in order here. Its rationale is that the farm problem arises from the overly simplified accounting rules, and the solution would be outright revocation of the authority for farmers to deduct raising and development costs. In the primary areas of abuse, this solution would require that livestock raising costs either be "inventoried" or "capitalized" (interchangeable terms for our purposes). For growing plants, the dispensation to expense cultural practices expenditures would be revoked. They would be capitalized, as apparently would have been required if the matter had been left to case law.[40] While this suggestion appears to be the proper tax treatment, there are at least two barriers to its adoption. The first is a practical one; the other is a political one. While the first undoubtedly could be reduced to nonobjectionable levels, there is great doubt that the second can be overcome.

Although the greatest abuses of the present scheme rarely arise in very diversified operations, the farmer engaged in multiple farming endeavors is always cited to illustrate the practical problem. For example, a farmer may be engaged in growing grain crops and livestock. Some of the grain may be fed to his livestock and some may be sold. Labor will be divided between these activities, and accurate separation of labor and other costs as between the various operations may be difficult. The allocation of costs between products on hand and products sold raises another accounting problem. These allocation problems suggest that a shortcut method of tracing costs must be devised if farming operations are not required to adopt cost accounting procedures,[41] which are sometimes claimed to be too sophisticated for the so-called family farm.

While inventories using some simplified valuation technique may fill the gap left by cost accounting,[42] their use is not a path without some obstacles. First, the products must be counted, and then they must be valued, Each process presents some problem.

Counting of the product on hand must occur at the end of the year. Since most tax years end on December 31, a livestock raiser might be forced into winter's blizzards to obtain a count of cattle. Substantial numbers of calves may also be in gestation at that time. These and other special problems might be overcome by delaying inventory until roundup time, assuming this time was approximately the same each year, but administration of this lenience could impose a burden on the Commissioner, who would have to decide in each case whether the special dispensation would be available. Another alternative might be the use of a fiscal year that would end at a time when the difficulties mentioned would be least present.

While these practices would permit the counting of animals, the measurement of

Footnotes at end of speech.

grain crops and other feed such as hay might not be susceptible of more than a fair estimate without expensive measuring and movement while in storage. Assuming that this burden would not be imposed, a reasonably accurate estimate is better than no count at all.

Although these and other techniques structured to ease the counting problems would grant a taxpayer some latitude and perhaps stretch his conscience, they seem to offer permissible, reasonable approximations, and they would reduce the counting problem to manageable proportions. They also appear likely to reflect income more accurately than the present accounting rules do.

Once the product is counted, its valuation remains, and the inventory method must be selected. At present, four methods are authorized: (a) cost; (b) lower of cost or market; (c) the farm price method; and (d) for livestock, the unit livestock method. Each has at least one feature suggesting either that the method is not feasible or that the method must be modified.

The use of cost suffers from the allocation difficulties just mentioned—the accounting art perhaps has not been sufficiently perfected to permit its use without excessive cost. Rejection of cost also leads to a rejection of cost or market, whichever is lower. If cost cannot feasibly be ascertained, certainly no determination of whether cost or market value is lower can be made. The alternative might be the use of market value. This method has never been acceptable, but its use might be considered. The major criticism of it would be the recognition of potential profit before realization by sale in those cases in which market exceeds cost.[43]

The farm price method is similar to market valuation. It values the product at current selling prices but permits the estimated direct cost of disposition to be deducted from the value. This method also suffers from the criticism that it would force a recognition of profit before realization.

We come then to the unit livestock method, which is, of course, not applicable to grain crops. It requires a classification of livestock by age and kind with a standard valuation, based on approximate costs when the inventory was first established, being given each unit. This unit value may not, however, be changed from year to year.[44] Thus it has some of the characteristics of the LIFO method but is more closely aligned to the base price method, a wholly impermissible method of accounting.[45] It fails to recognize price increases and thus permits a premature deduction of costs when costs are rising.[46]

While the use of inventories does offer a means of estimating costs, each of the methods now in use carries with it at least one infirmity, which suggests that new methods or adaptation of old ones should be considered when applied to farming. Ideally, a method akin to the present retail price method might solve most of the problems by permitting valuation at current market less a reasonable profit margin, so as to prevent the premature recognition of income that now occurs under the farm price method.

But even adaptation of inventory methods would not prevent a number of transitional problems. Costs written off in earlier years might become a part of the opening inventory and become an adjustment for the purposes of section 481, which prescribes rules for handling accounting problems arising out of a change of method. In some cases these adjustments would convert what is capital gain when sold under present law to ordinary income when placed in opening inventory in the year of change. While other problems could also arise, they should soon disappear as all existing operations shifted to proper accounting and as new enterprises commenced business using proper methods. The practical problems thus could be overcome.

This brings us to the political problem. While there may be considerable sentiment in Congress to deal with the farm problem,[47] it does not seem to be premised on the belief that the cash method should be eliminated for farmers. Indeed, the very foundation of the present bills is to preserve the cash method for "farmers" while dealing with the abuses arising from its use by nonfarmers. This political problem appears insuperable at the moment.

In concluding this discussion, the denial of cash accounting and full capitalization of costs would eliminate a large part of the farm loss problem, *i.e.*, the deferral of taxes resulting from premature deduction, the complete exemption of farm profits from tax, and the negative income tax. While arguably ideal,[48] this solution does raise the previously discussed technical and practical problems. The problems are not sufficiently grave as to cast doubt on the correctness of this approach. Their superficial complexity lends support to the conclusion that whatever the Congressional mood, it is not to prescribe theoretically correct accounting rules applicable for all farmers. We turn, therefore, to other solutions.

VI. OTHER SOLUTIONS

Since elimination of the farmers' cash accounting may engender political opposition from quarters now espousing some change in the farm tax rules, those desiring improvement must move on to consider other approaches. Two are now pending before Congress. One is a modified version of the excess deductions account proposed by President Kennedy in 1963.[49] The other is now embodied in a bill authored by Senator Metcalf of Montana.[50] The excess deductions account may be described as a recapture proposal [51] while Senator Metcalf's Bill is a disallowance proposal.

A. Recapture

This discussion begins with the Treasury's proposals to Congress on April 21, 1969.[52] It consisted of an excess deduction account referred to as an EDA. In the case of corporations, any excess of ordinary farm deductions over ordinary farm income would be required to be entered into the EDA. All other taxpayers would add this excess only to the extent that it exceeded $5,000. The amount in the EDA is reduced in any subsequent year [53] by any net farm income in the subsequent year. The $5,000 floor has the purpose of exempting the small "legitimate" farmer from the operation of the EDA.[54] Apparently, it is not granted for a corporation in order to preclude a taxpayer separating his farming operation into several Subchapter S corporations and securing the benefit of several floors on the EDA.

Gain on the disposition of farm property that may now be reported as capital gain would be reported as ordinary income to the extent of any amount in the EDA, computed at the year's end after giving effect to operations for the year.[55] The amount in the account would be reduced by the amount of capital gain converted to ordinary income. Increases in land values would be exempted from this conversion of capital gain to ordinary income except to the extent there had been prior deduction of clear capital expenditures such as soil and water conservation expenses, fertilizer costs, and land clearing costs, under sections 175, 180, and 182, with respect to the parcel sold. No amount of farm loss is disallowed, and a taxpayer using a full cost absorption inventory method of accounting and capitalizing capital expenditures would not be required to keep the EDA.[56]

As already noted, the current proposal is similar to one proposed in 1963, but there are several differences. Under the 1963 EDA, additions to the account would be made only in years in which the taxpayer's nonfarm income exceeded $15,000. The purpose of this feature appears to be the same as the $5,000 floor in the current proposal. The 1963 proposal, however, focused more sharply on the use of farm losses to reduce taxes on nonfarm income. The 1963 proposal defined a farmer as one not having nonfarm income in excess of $15,000. The present proposal defines the farmer as one not having losses greater than $5,000. Both concede the propriety of deducting livestock losses against other farm income such as grain crops without penalty.

The 1963 recommendation also excluded certain expenses in computing the excess of income over deductions. These excluded expenses were taxes and interest and losses and expenses from casualties and drought. It did not, however, contain an exception for gains due to increases in land values.

The theory underlying the excess deductions account must be that the economic reality of the farm tax loss may not be determined when the loss is incurred. Since it may be an economic loss, it should be fully allowable against other income. The loss, however, arises in an industry in which the accounting rules and definition of capital assets are so loose that later capital gain must be presumed to have been created by the loss. Since the loss was an ordinary income deduction, the gain must be treated as ordinary income. Thus the EDA attacks the problem of converting ordinary income to capital gain. It does not, however, question the validity of the loss that permits an improper deferral of taxes if the loss is not an economic loss.

B. S. 500, Senator Metcalf's bill

The initial analysis of the farm loss problem demonstrated that even the generous farm tax rules could not do more than exempt farm profits from tax, if the farmer had no outside income. This Bill apparently attempts to reach somewhat the same result by treating taxpayers having large nonfarm income as if their farm operations were carried on apart from their other activities. By eliminating or at least reducing the spillover of artificial "farm losses" against income produced by other activity, farmers having large nonfarm income would be brought nearly to a parity with farmers who do not have substantial nonfarm income.

On the other hand, tax losses resulting from true economic losses from farming are not to be treated less favorably than losses sustained in nonfarming businesses. An economic loss can be determined by proper accounting, and the limitations of the Bill would not apply if the taxpayer elected to forgo the special farm accounting rules. Instead, if accounting rules applicable to business generally—and to farming itself apart from taxation—were adopted to insure that tax losses were real and not simply the result of accounting distortions, a taxpayer would be excepted from the Bill. To fall under the alternative, a taxpayer would have to elect to use inventories when they were a significant factor and also elect to capitalize all capital expenditures, including development costs incurred prior to the time when the productive stage is reached in farm operations.

Absent the election, a taxpayer could not deduct in any one year more than $15,000 of a farm loss against income from sources other than farming, and even the first $15,000 of deductible loss is decreased by one dollar for each dollar of nonfarm adjusted gross income in excess of $15,000. Thus at $30,000 of nonfarm adjusted gross income, no farm loss would be allowed. Apparently, the first $15,000 of loss is allowed to prevent application of the Bill to farmers who may have to supplement their income with part-time employment or with employment during the off season. The Bill assumes that if a taxpayer has no more than $15,000 of nonfarm income, he is the type of farmer for whom the spe-

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cial accounting rules were devised. As his nonfarm income progresses upward from this figure, he becomes less like such a farmer with each dollar of nonfarm income, until his income reaches $30,000 at which time he must choose between proper accounting and use of farm losses against other income.

A farm loss would be defined generally as the difference between the total of a taxpayer's farm expenses and his farm income. Farm income would include only the one-half of farm capital gains that is included in adjusted gross income. It could also include the income of an operation related to and conducted on an integrated basis with the farm operation. If the difference between expenses and income is more than $15,000, only the first $15,000 of the loss could be deducted. The disallowed portion would first be reduced by the excluded one-half of farm capital gains. Thereafter any balance could be carried forward and backward as a deduction against net farm income of other years (including the taxable one-half of capital gains) to avoid imposing hardships when the taxpayer incurs a large isolated loss in one year.

Certain deductions are excluded from the farm loss computation. The result is that they are thereby allowed even though the loss may exceed the $15,000 limit. These deductions are (1) taxes and interest, (2) casualty, drought, and abandonment losses and expenses, and (3) losses on the sale of "farm assets," [57] which as defined in the Bill includes any property used in the trade or business of farming under section 1231(b)(1), (3), or (4). The first category consists of items generally deductible whether or not they are attributable to the carrying on of a trade or business. The second consists of items not in the taxpayer's control, and disallowance of them might create an undue hardship to the taxpayer. Notably, these same expenses and losses are excluded from the operation of present section 270. The third category is losses incurred on the sale or other disposition of section 1231 assets or property used in the farming business. These losses generally represent real economic losses and not artificial "tax losses" created by the special farm tax accounting rules. It must be noted that the unlimited deduction of all the above items would be in lieu of the $15,000 limitation.

When the farming activity is carried on by a partnership or a Subchapter S corporation, the farm nature of the income and expense would be carried over to the individual partners or shareholders who would aggregate the income and expense with all of their other farm operations. The $15,000 limitation would then apply to any loss computed on this individual aggregate basis unless each of the entities from which the individual derived farm income or deductions had made the election described above.

The obvious design of this Bill is to treat farming as a special industry and confine the tax benefits of the farm tax rules to farm income. It is apparently premised on the notion that the farm accounting rules are so generous that farming is a special business, which should be isolated. The effect is to build a wall around farming and to allow all of the special rules to apply only within the walled territory. Only for foreswearing the special accounting rules and electing to apply normal accounting can a taxpayer destroy the wall insulating the tax aspects of his farm from his other income. This general theory is breached somewhat in allowing some loss, the first $15,000 if other adjusted gross income does not exceed $15,000, to be deducted. This allowance, however, arises only in an effort to define a farmer, and thus its benefits are limited to farmers.

Footnotes at end of speech.

By isolating farm income, the Bill is designed to preserve the capital gain treatment accorded farm assets and the farm accounting rules, while limiting their effect to farm income. It proceeds on the assumption that the use of the farm loss against other income is the practice to be curbed.

The question to which we now turn is whether this isolation is preferable to the continued allowance of losses but conversion of some capital gain to ordinary income as occurs under a recapture proposal such as the EDA.

VII. EVALUATION OF THE EDA AND THE METCALF BILL

The theoretical underpinnings of the EDA and the loss disallowance proposals are quite different. The first apparently concedes the propriety of the loss and argues that the resulting creation of capital gain is improper. The second proceeds from a belief that the abuse lies in the current use of the farm loss against other income but sanctifies capital gain treatment of certain assets. The question of which is better might be answered on just these theoretical distinctions. More appropriately, one may inquire into the practical differences in operation. This is done below first by analyzing the general theory of each and then by taking account of the special wrinkles each offers in its published form.

A. The recurring loss

Assume a hypothetical case, with a consistent pattern year to year, in which the net operating costs [58] each year of $100 produce animals that may be sold at $110. Since the animals do not qualify for capital gain treatment until they have been held more than twelve months, there are no sales the first year even though the cost is incurred. Thus, costs in the first year of operations are $100, and the product would, under present law, become $110 of capital gains on sale in the second year.

The EDA would permit the $100 "loss" in the first year to be deducted against income from other activities. To a taxpayer having an effective marginal tax rate of 60 percent, the loss produces a tax savings of $60 on other income. These foregone taxes become an interest-free loan, which is not repaid for a substantial period. The loss, however, is added to the EDA, which is $100 when the second year starts. The second year also results in net costs of $100, which will produce a $110 gain in the third year. The loss of $100 in the second year is added to the EDA, and at year's end, it stands at $200. As a consequence, the entire sales proceeds of $110 in that year are converted to ordinary income, giving a net ordinary income of $10 when combined with the $100 "loss." The full amount of the sales proceeds would be subtracted from the EDA. The balance in the EDA is then only $90. This balance is increased by the third year costs of $100, and the account totals $190 at that year's end. In the third year, the entire sales proceeds of $110 are converted to ordinary income, and the same amount is subtracted from the excess deductions account. The amount in the EDA to be carried to the fourth year is then reduced to $80. The pattern is repeated until at the end of the eleventh year, the amount in the EDA account would be reduced to zero. Thereafter, the taxpayer would report a $100 loss each year, which would convert $100 of the sales proceeds into ordinary income, resulting in neither ordinary income nor loss. The additional sales proceeds of $10 would be reported as capital gain.

From this a rule may be derived—assuming an operation consistently producing the same amount of costs and sales proceeds. The rule is that the tax-free loan produced by the first year loss will be repaid in equal annual installments over a number of years, which is derived by dividing the profit margin into one. Thus, if the profit margin is only 2 percent, the period of the loan is 50 years; if 4 percent, the period is 25 years; if 10 percent, the period is 10 years.

In comparison, the Metcalf Bill would not allow any loss in the first year, but the taxpayer would have a farm loss carryover of $100 to be used against farm income of the second year. Under that Bill, the farm income of the second year would be only $55 (the taxed portion of the capital gain of $110), and the loss of the second year would entirely absorb this income. The excluded one-half of the capital gain, however, would absorb the balance of the second year's loss as well as $10 of the carryover. The carryover to the third year would be only $90; to the fourth year, $80. By the end of the eleventh year, the carryover would have disappeared, but no tax liability would have been incurred in any of the years. Nor would operations thereafter incur any tax liability because the taxable one-half of capital gain would always be less than the deductions available to offset it. The carryover would disappear, and if the operation were terminated in the thirteenth year, there would be a capital gains tax on the full sales proceeds.

Again, a rule may be derived. The farm loss carryover disappears at the same time that the taxpayer has repaid the tax-free loan under the EDA. Even after the carryover disappears no amount of tax will be paid unless sales proceeds are more than twice costs. This is the very nature of capital gain income. But no loss has offset any income earned outside the farming operation.

The foregoing analysis assumes that the farming operation commences after the EDA or the Metcalf Bill is enacted into law. Their effect on existing operations would differ slightly. Under the EDA, sales in the year of enactment would be denied capital gains to the extent of current excess deductions. There would be no deferral of taxes on current expenses. But prior years' expenses would continue to be deferred, and assuming no change in operations, prior years' deferral would not be recaptured at capital gain rates until the operation terminated. If the operation were diminishing, the deferral of prior years' expenses would be returned at capital gain rates each year in an amount in proportion to the diminution. A diminishing operation, therefore, is just a termination occurring over a number of years. If the operation were expanded, however, the expenses of the expansion in that year would shelter an equal amount of outside income and permit the tax to be deferred on the sheltered income in the described pattern.

The ability to increase the amount on which taxes have been deferred merely by increasing the size of the operation may be the weakest point in the EDA. When this potential is combined with the continuance of special accounting rules, the estate planning possibilities begin to be apparent. Since losses are fully deductible with no penalty prior to transfer, the EDA will encourage the shifting and prepaying of expenses of the expanding operation with a minimum of sales. If this can be continued a sufficient number of years, the taxpayer may leave a very bountiful estate to his bereaved, and they will take it at a new basis without any excess deductions account.

Under Senator Metcalf's Bill, prior years' expenses are in essence merely forgotten. The chances are that they will never have any effect on future tax liability and, in distinction to the EDA, will never be recaptured at all. There is, however, no loss deduction against other income and hence no potential for an increasing deferral. Similarly, the Bill is neutral on decreasing operations. The Bill should not present an incentive either for expansion or for diminution of operations.

B. The one-time development loss

Having analyzed an operation having a recurring pattern, we should now turn to an

operation such as a citrus grove in which losses resulting from development costs are reported for a substantial period before sale at capital gains rates occurs. For example, assume that an orchard has a cost of $100 and a four year development period, during which the deductible expenses are $100 each year. At the start of the fifth year the grove is sold for an economic profit of $200 or at a $700 sales price.

Under the EDA, the annual loss of $100 could offset otherwise fully taxable income each year. A cumulative total of $400 in losses would be reported, and on the sale, $400 of ordinary income and $200 of capital gain would be realized. The result may be argued to be very close to a forced capitalization of costs except for the deferral of taxes on current income. If the ordinary income in the year of sale is viewed to just equalize the prior deductions, the EDA reaches the result on sale that would flow from proper capitalization of costs. But in the meantime, the cost has been currently deducted against other income with a consequent deferral of taxes on that other income.

Under Senator Metcalf's Bill, no losses would be allowed, but the $400 carryover would insulate the entire $600 gain from tax because it would exceed the one-half of the gain reported for tax purposes. There would then be a complete exemption of the gain from tax. Indeed, the farm loss carryover could exempt from tax another $200 of farm capital gain or $100 of ordinary farm income. This result follows from the language of the Bill in its present form, but as will be noted later, the Bill could be strengthened to avoid this result by causing the farm loss to be absorbed against the untaxed as well as the taxed portion of capital gains.

The immediate reaction to the foregoing is that the EDA is greatly superior to the Metcalf Bill because the latter continues to permit substantial income to be untaxed. This ready answer may not, however, withstand analysis and some effort to quantify the benefit of the deferral of taxes granted by the EDA. We turn now to that task.

If EDA is applied to the above example, a taxpayer in the 60 percent bracket would realize a tax savings of $60 in each of the four years in which $100 of costs were incurred. If his rate is the same in the year of sale, the only effect is to loan the taxpayer $60 for four years, an additional $60 for three years, an additonal $60 for two years, and finally an additional $60 for one year. In the fifth year when the grove is sold, these loans are repaid by converting $400 of the gain to ordinary income. In addition, the taxpayer would pay a capital gains tax on the economic profit. If a taxpayer could borrow at rate of 7.5 percent[59] per annum, these loans would have had a value of $36 (that is, a savings in interest expense if the funds were borrowed) to the taxpayer. The capital gains tax he would incur would be $50. Therefore, there is a net tax detriment of $14 to the taxpayer. If either the interest rate or the period of deferral are increased, however, the odds in favor of the taxpayer increase. For example, if the borrowing rate is 10 percent, there is a virtual standoff, or if the development period is extended two years, the taxpayer's interest-free loan more than exceeds the value of the capital gains tax. On the other hand, if the profit margin is greater, the taxpayer will pay a greater tax.

This analysis suggests that the ability to defer taxes, which must ultimately be paid, even at ordinary rates, can be just as valuable as complete exemption from tax, particularly capital gains tax. The conclusion as to the efficacy of the EDA as compared to the Metcalf Bill then depends on a number of factors that may vary from taxpayer to taxpayer, from year to year, and from farm to farm. We shall return to this question later.

C. Lock in versus force out

The preceding discussion raises one other difference in the approaches; one would conclude that under the EDA the longer the period of deferral, the bigger the reward to the taxpayer. Since the deferral period exists until there are sales, the EDA might be said to discourage sales and thereby to "lock an investor in" to his farm investment. On the other hand, Mr. Metcalf grants a carryover, which expires at the end of five years. If his Bill is to be utilized to its optimum, the taxpayer must sell sufficiently often to absorb the carryover. The Bill then may be argued to "force out" a taxpayer at least once every six years.

An argument can be made that this difference would not exist in practice because lengthy deferral under the EDA could lead to a serious bunching of income. Bunching would present a problem by raising the marginal tax rate in a year of sale sufficiently to eliminate the deferral benefit. Thus the argument runs that bunching would tend to force sales to smooth out the income pattern. To the extent the realization pattern has large bulges, they may be somewhat ameliorated by the averaging provisions of the Code.[60] Certainly, this is no time or place to delve into the mysteries of averaging, but if it operates perfectly, it can tend to cause a realization of income at least once every five years to gain the full benefit of averaging. The bunching and the spread out obtained under averaging may be argued to undo the "lock in" effect and create its own "force out."[61] But all of this assumes that the increase in tax rates resulting from the bulge in income cannot be handled in any other way and also that the benefit of averaging is substantially reduced by exceeding the five year period. There is doubt that either of these assumptions would be true in the majority of cases. There would then be little reason to bring the deferral period to an end.

D. The preferred status of other farm income

Both approaches grant a preferred status to ordinary farm income. While farm losses may be currently used to shelter any other income under the EDA, a farm loss may ultimately result in farm capital gain being converted to ordinary income. If the farm loss in one endeavor can be used against other ordinary farm income, there will be no EDA to convert later farm capital gains into ordinary income. For example, if other farm income can be found to equal excess livestock deductions, full capital gain treatment will be preserved on the livestock sales.

The Metcalf Bill might give an even greater impetus to diversify farm operations because the farm loss cannot be used against any other income. It therefore has no value whatsoever unless there is other farm income, while the EDA still permits use of the loss against other income. If a taxpayer could produce other ordinary farm income equal to livestock deductions, the livestock deductions could entirely exempt this other farm income from tax under the Metcalf Bill while the livestock gain would be subjected only to capital gain rates.

E. A quirk in the Metcalf bill

One further aspect of ordinary farm income under the Metcalf Bill should be noted. If we return to a simple case in which $100 of costs in the first year produces $110 of capital gain in the following year, the carryover rules have a strange effect. After deducting one-half of the capital gain in the second year, the farm income is $55. Under the Bill, the farm loss carryover of $100 from the first year would, in the second year, shelter an additional $45 of ordinary farm income from tax.

If the sales of livestock had been spread over the two years, the results would differ, however. If the taxpayer had realized $20 of ordinary farm income and $80 of livestock capital gains in the first year, the farm income would have been $60 ($20 of ordinary income plus $40, the included one-half of the livestock capital gains), and none of it would have been taxable because the farm loss of $100 would offset the farm income. There would be no farm loss carryover to the second year, however, because the farm loss ($40, which results from $100 of costs reduced by $60 of farm income) available for a carryover would be reduced by the one-half of the livestock capital gains deducted under section 1202. This amount is just equal to the farm loss, and there would be no carryover. The capital gains in the second year would be $30 ($110 less the $80 of sales in the first year), which would be reduced to $15 of taxable income by the section 1202 deduction. There would not be any farm loss carryover to reduce the taxable income further. The result is that the farm loss would have offset only the $20 of ordinary income realized in the first year and none of the capital gain or ordinary income in the second year. The explanation for this result is that the farm loss is not reduced by the amount deducted for capital gains under section 1202 for the purposes of determining how much farm income it can offset in the year of the gain, but is so reduced for the purpose of determining how much is available to carry over to later years. In this case, that amount eliminated the carryover.

While this result may appear strange, it is consistent with the Code's present treatment of net operating loss carryovers, which must be reduced by the section 1202 deduction in the year the loss is incurred. The moral would appear to be to avoid capital gains in years of ordinary losses. The result is one that puts the taxpayer who is unable to avoid capital gains in loss years at a disadvantage, unless he can also realize other ordinary farm income. It is, however, consistent with the view that only economic losses should be the subject of carryovers. To fail to make this adjustment would put farm losses on a higher level than other carryovers—certainly not an aim of this Bill—because they could be carried over for use against other farm income in greater amounts than other loss carryovers. This result then treats farm loss carryovers like other carryovers except in so far as it limits their use to farm income and is consistent with the theory of isolating and segregating farm operations from other operations unless proper accounting rules are followed.

F. The small farmer exception

The Treasury EDA is not increased in any year in which the loss does not exceed $5,000. If operations are fairly consistent, this provision, in effect, would permit an annual loss deduction of $5,000 offset by capital gains of $5,000, which would not be converted to ordinary income. It could be exploited to the extent of $2,250 in tax savings each year.[62] This is the maximum benefit that may be derived from this exception.

The EDA floor might, however, be objectionable to some farmers who apparently are the type of taxpayers intended to benefit from simplified accounting. The $5,000 figure is relatively low and is not softened by excluding any deductions from the EDA. As a consequence the so-called "legitimate" farmers could lose some of the benefit of capital gain treatment.

The Metcalf Bill instead would allow a farm loss in the amount of $15,000 each year. This annual loss allowance may be the most serious defect of the Bill, although as later explained it may to some extent be remedied by other features of the Bill. The problem may perhaps best be shown by taking a citrus grove as an example. Assume that the land and planting cost is $10,000; that cultural practice expenditures of $15,000 are incurred annually; that the grove reaches the productive stage in the seventh

Footnotes at end of speech.

year of its life; and that it is then sold for $135,000, an economic profit of $20,000.

Under the excess deductions account, the taxpayer would claim his $15,000 loss each year and add $10,000 to the EDA. The account would total $70,000 at the end of the seventh year, and the balance would convert $70,000 of the sale proceeds to ordinary income. In addition, there would be a capital gain of $55,000, which would reduce to $27,500 of taxable income. This has two effects: (1) There has been a deferral of taxes on $15,000 of income each year for six years to total $90,000. (2) There is a bunching of ordinary income in the year of sale. While this aspect may appear to create a serious problem, the penalty arising from bunching undoubtedly would be greatly eased by income averaging under sections 1301–04. In addition, there has been a gross mismatching of income and expense.

On the other hand, the Metcalf Bill permits $15,000 loss to be deducted annually if the taxpayer has no more than $15,000 nonfarm adjusted gross income. Thus there is deferral of taxes on the income sheltered by the loss. The taxpayer in this example would have sheltered $90,000 of nonfarm income from tax over the first six years. Upon sale, there would be a capital gain of $125,000 (sales price of $135,000 less land and planting costs of $10,000). After the section 1202 deduction, this would be reduced to $62,500, which would become $47,500 of taxable income after reduction by the $15,000 of cultural practices expenditures in the year of sale. Thus the annual loss allowance, which was designed to define a farmer, has the effect of allowing uneconomic losses to offset other income and defer taxes on other income to the extent of $15,000 per year. When this loss is recaptured on sale, it is taxed at no more than capital gain rates. The continuance of this potential to shelter other income might induce investors to seek investments that limit the loss to $15,000 per year were there not other features of the Bill that should prevent much exploitation of the annual loss allowance.

While the Bill thus appears to have these drawbacks, it also reduces the annual loss allowance by one dollar for each dollar of nonfarm adjusted gross income in excess of $15,000. At $30,000 of nonfarm adjusted gross income the annual allowance disappears. In the majority of cases, it is doubtful that one having nonfarm adjusted gross income at this level will have funds to invest to produce a $15,000 annual loss. Also the tax rate on a joint return at those income levels is less than 40 percent, and the tax savings, arising by permitting capital gain treatment on the sale, is not great because the difference in the ordinary income rate and the rate that would apply to bunched capital gains may not be great. Even so, a taxpayer having nonfarm adjusted gross income of less than $30,000 has some opportunity (but one, which declines as income increases) to exploit a farm loss and need only answer the question whether the play in tax rates is worth the risks and investment inconvenience. Even with this criticism, the Bill significantly reduces the tax benefits of farm losses. *This problem does point out that without the phaseout, the Bill would be a far less effective tool.*

G. The integrated and related exception

The Metcalf Bill also provides that if a taxpayer is engaged in farming and one or more businesses, which are directly related to his farming and conducted on an integrated basis with his farming, the taxpayer may elect to treat all these businesses as a single business engaged in farming. The obvious purpose is to permit a taxpayer to treat a nonfarm business, producing net income, as a part of his farming operation, to reduce the farm loss and thereby reduce the amount to which the Bill applies.

The provision also raises a definitional problem in determining whether the two operations are related on an integrated basis. This problem could be cured by providing that a business would not be considered as related and conducted on an integrated basis with the farming operation, unless it consisted of the processing of a product raised in the farming operation. Such an exception should apply only if the sale of such processed produce produces a substantial portion of the total receipts of the overall operation.

Even with this modification, the provision raises the spectre that the Bill might fail to achieve its goal by permitting the offsetting of some "farm losses," arising from the farm tax accounting rules, against income earned in other business. For example, a taxpayer might be engaged in processing frozen orange concentrate from an orange grove on which large expenditures and consequent "farm losses" were incurred because a part of the grove had not yet reached full production. The grove, as a whole, presumably would be related to and conducted on an integrated basis with the concentrating business, and the special benefit of deducting "farm losses" against income from the concentrating business would be continued. Primarily, this provision would benefit those taxpayers who have the capital and resources to engage in a business related and integrated with their farming operations. With respect to these taxpayers the Bill would not accomplish its basic objectives, even though these taxpayers would not appear to be the type of taxpayer for whom the special farm accounting rules were devised.

Thus, even if modified as suggested, the Bill might not accomplish its basic purpose. The treating of separate businesses as a single operation departs from the usual practice in administering the tax law and may raise problems neither foreseen nor foreseeable at this time. There is little to be said for the provision, and it should be eliminated.

The EDA has a similar exception, which is not explicitly stated. Since the EDA converts capital gain to ordinary income only on a sale, it would never be actuated in many industries. For example, the frozen orange juice concentrator just mentioned might never sell the grove. If he did not, the EDA would have nothing on which to operate. The EDA would thus continue to permit the offsetting of farm losses against income from other sources for which the taxpayer would pay no penalty.[62]

H. Specially treated deductions exception

The Metcalf Bill permits a taxpayer to choose between the $15,000 annual loss allowance and the total of certain so-called specially treated deductions. These deductions are taxes and interest, losses and expenses arising from abandonment, casualty, or drought, and recognized losses under section 1231. The theory seems to be that these losses are indeed economic losses and should not be subject to the disallowance rule. There is considerable appeal to this position, and it probably reaches a proper result.

In contrast, the Treasury's EDA makes no exception for such expenses. It should be noted that the EDA never disallows a loss. Rather, it is the measure of later capital gain that will be converted to ordinary income. A failure to exempt these expenses from the EDA must rest on the premise that either (1) the $5,000 annual exception will account for them, or (2) the capital gain provisions are so generous that any loss, whether economic or not, should be used as a means of recapturing ordinary income deductions. In either case, the reasoning seems to be a little thin, and it seems likely that exclusions of some sort will be made.

I. Both approaches involve certain assumptions regarding causes and effects of losses

Both the EDA and the Metcalf Bill may be characterized as being arbitrary. The EDA operates on the premise that a farm loss creates capital gain. Perhaps a fairly valid assumption, but it may not be true when the loss results from casualty.

Similarly, the Metcalf Bill's denial of a loss is not explicitly limited to artificial losses created by the special farm accounting rules. The specially treated deductions exception may have virtually that effect, particularly if modified as hereinafter suggested. Its assumption that any remaining loss is created by the special farm accounting rules is on balance probably a fairer assumption than the assumption underlying the EDA.

Criticism of either proposal on this ground is not serious, and both underlying assumptions could be argued to be valid in a sufficiently large majority of cases to provide a basis for legislative action.

J. A final note on the Metcalf bill

As previously noted, limiting the amount of a farm loss deductible against the amount of other farm income will ordinarily remove the so-called negative income tax effect. When farm income is only the included one-half of capital gains on which the tax rate is limited to 25 percent, however, deduction against ordinary income by a taxpayer having a tax rate in excess of 50 percent will continue to result in the negative tax effect. That is, one having a tax bracket greater than 50 percent will be able to achieve an effective tax of less than 0 percent on his overall farm profits because the tax saving from the loss deduction, although the deductible loss is limited to the taxable portion of capital, is greater than the tax on the capital gain.

The fact that the negative income tax effect is not entirely removed is not attributable, however, to either the cash method or the deduction of one-half of capital gains. Rather, it is solely attributable to the alternative 25 percent tax on capital gains. If rates on capital gains were not so limited but allowed to progress up to one-half of the ordinary rate, the negative tax on farm profits would be fully remedied by this proposal.[64] The EDA does not suffer from this disability.

K. A final note on the EDA

As presented in 1963 and as under the current proposal, the EDA is a matter personal to the taxpayer. Apparently, the 1963 proposal would have applied upon any disposition of property while the current Technical Explanation deals only with "sales." Presumably, sales will be transformed into dispositions when the statutory language is drafted. If it is not, a number of transfers could permit the taxpayer to have had the advantage of the deduction while shifting the capital gain asset to another taxpayer. These transfers would include gifts, charitable contributions,[65] transfers to corporations under section 351, reorganization transfers, transfers to partnerships under section 721, transfers to trusts, corporate liquidations, transfers to or distributions by an estate or trust, and like exchanges and involuntary conversions.

The difficulty with imposing a tax on these transfers is that the taxpayer has not received any cash providing the wherewithal for paying the tax. In addition, the recapture provisions under section 1245 and section 1250 provide special treatment for these transfers (other than taxable corporate liquidations and distributions by estates and trusts), and the Treasury may be hard pressed to make a case for taxing transfers under the EDA, which are not now taxed under these recapture provisions. It is submitted that such a case can be made, however.

Footnotes at end of speech.

Except for a few industries such as the leasing of automobiles, most depreciable property subject to section 1245 does not by its very operation constantly produce merchandise for transfer, even though the merchandise so produced has also been used in the trade or business. The process of culling the livestock crop does produce this merchandise. The very nature of the business makes it inevitable that there will be substantial property that must be transferred. In most section 1245 cases, the property is either abandoned or transferred at nominal value. It may be argued that recapture is satisfactory in these cases but that it is unsatisfactory when transfers are inevitable and each transfer presents a substantial tax avoidance opportunity. Thus the abuse possibilities are worse in this case, and recapture just is not adequate to handle the problem.

If the tax is not imposed at the time of disposition, a substantial avoidance problem can arise, although it might be possible to have the EDA carryover to the transferee.[66] Even with a carryover, there would still be the possibility of shifting substantial amounts of income from a high bracket taxpayer to a low bracket taxpayer.

L. Making the choice

Since the foregoing may not have made the choice between the Treasury's proposal and the Metcalf Bill clear, perhaps we should return to our early discussion in which the benefits of expensing capital expenditures while reporting sales proceeds as capital gain were first specified as (a) a deferral of taxes on an amount of other income equal to the prematurely deducted capital expenditures, (b) the complete exemption of profitable operations from any tax until the ratio of sales proceeds to costs exceeds the ratio of the ordinary tax rate to the capital gain rate, and (c) the negative tax effect that results, even though the operation is profitable, if the deferred taxes under (a) are greater than the taxes paid on sale. Since none of these advantages generally is available to other businesses, we should test any solution in light of the extent to which these benefits would be eliminated. In view of this criterion and based on the assumption that profit margins in farming are low,[67] there would seem to be little doubt but that the Metcalf Bill is superior to the EDA in the prime areas of abuse: (a) development costs of plants, and (b) livestock. In addition, as later explained, the Metcalf Bill may reach some of the other areas of abuse.[68]

First, as to the matter of deferral, the Metcalf Bill begins to cut off this benefit when the taxpayer's nonfarm income exceeds $15,000, and at $30,000, the interest-free loan from the Government is no longer available. In comparison, the EDA does not disallow any loss. It has no effect on the deferral feature of deducting capital expenditures.

Second, the EDA seems to eliminate the prospect that a profitable operation will be completely exempt from tax. As we have seen, the Metcalf Bill permits this exemption to continue. This aspect of the Metcalf Bill could be remedied, however, by requiring that the full amount of farm capital gains be reduced by the "farm loss" before reducing the farm capital gains by the deduction under section 1202. The farm loss carryback or carryforward would be similarly limited. As a result, net farm gains would be taxed at least at capital gains rates.

But even without this change, it appears that the choice between the EDA and the Metcalf Bill remains the same because when profit margins are low, the deferral is much more advantageous than exemption from tax. This results because deferral is an interest-free loan on the marginal tax rate multiplied by the entire cost while exemption is an exemption from a capital gains tax on profit, which is low in relation to the cost. Thus, under the EDA, the interest-free loan from the Government is repaid rather slowly. For example, if costs consistently run $100 while sales are at a 5 percent profit margin or $5, the EDA permits a taxpayer to make no sales until the second year and to obtain the benefit of having deferred the tax on $100 over the following 20 years. If we assume a 70 percent taxpayer having in today's market a 7 percent borrowing rate, the annual benefit realized by the deferral is $4.90. In return for this benefit, he pays $1.25 of tax each year as the cattle are sold. The net benefit thus is $3.65, which reduces by 5 percent each year.

This savings may be compared to the exemption from tax of the net annual capital gain of $5, which is $1.25. This exempiton would be achieved under the Metcalf Bill, but it has less value than deferral when profit margins are low.

When an asset such as a citrus grove is developed, the deferral aspect of the EDA may have substantially more benefit than exemption from tax. For example, if a $1,000 loss is incurred each year for a five-year period, a 70 percent taxpayer having a borrowing rate of 7 percent will be able to reduce his overall capital cost by 17.5 percent of the total cost just by the benefit of the deferred taxes. To obtain the same benefit in exemption from capital gains tax, the grove would have to be sold at an economic profit of 70 percent. If the grove is sold, the EDA will result in a bunching of ordinary income in the year of sale when the EDA is actuated and recaptures the prior deductions. While bunching might offset some of the benefit of deferral, if the taxpayer is not consistently in the top bracket, the averaging provisions of the Code may spread the bunched income over the deferral period thus lessening the bunching, but the benefit of deferral would remain.

In addition to the value of deferral resulting from the Government's loan for the amount of the deductions multiplied by the taxpayer's marginal tax rate, it also cuts the federal government in on the loss side of the transaction well before either the taxpayer or the Government can know whether the venture will ultimately be a success. The value of this risk shifting is probably far more than the interest-free loan.

This brings us to the third standard: to what extent is the negative tax eliminated? Under the EDA, the negative tax may occur if the sales proceeds are recaptured at a lower tax rate than the rate in the effect when the expenses were deducted. Thus, if the taxpayer can await retirement, a lower income, death, or achieve a transfer to a lower bracket taxpayer,[69] the taxpayer not only has the benefit of deferring taxes on other income by currently deducting his farm costs, but a negative tax can be effected.

The Metcalf Bill does not completely foreclose the possibility of a negative tax subsidy. This potential is, however, preserved only (a) when the abuse may at least be said not to be great (taxpayers who have less than $30,000 of nonfarm adjusted gross income),[70] and (b) to those taxpayers who have a marginal tax rate in excess of 50 percent. For example, in the latter case if a taxpayer in the 70 percent bracket has a $50 farm loss and $100 of farm capital gains, the farm income under the Bill just equals the farm loss that remains fully deductible against other ordinary income. The loss would produce a tax saving of $35, while the farm capital gains are subjected to only a $25 alternative tax for capital gains. This latter undesirable effect results from the alternative tax on capital gains, but it could be prevented by a slight modification in the Bill. If farm losses were required to offset farm capital gains *before* application of the alternative tax rate, there would have been no farm loss to use against ordinary income. In the example, the farm loss would have reduced the farm capital gain to $50 on which a tax of $12.50 would have been paid. Thus the Bill may be structured to handle this problem.

In addition to these fundamental questions, the Metcalf Bill also reaches the so-called do-it-yourself averager who, under the Bill, would not obtain any benefits by maximizing his loss in one year since it could not be used to insulate any income outside the farm assets. The EDA would have no effect on this device.

Also, the Metcalf Bill may have some salutary effect on the true hobby farmer who could deduct no loss unless he adopted a proper accounting method. If he did so, he could continue to deduct his hobby loss so long as he could prove it was more than a mere hobby. Adoption of proper accounting would seemingly reduce the amount of the annual loss, although it might not remove it. On the other hand, if there are few sales from the hobby operation, the EDA would have little impact.

To sum up, the EDA fails to close the door on deferral, does not eliminate the possibility of exempting farm profits from tax unless the amount subject to recapture is taxed at the same rates as amounts deducted, and also opens wide the door of avoidance by transfers that will result in the negative tax effect. Neither does it reach the do-it-yourself averager. Its effect on the "hobby farmer" is unpredictable. On the other hand, the Metcalf Bill phases out deferral commencing at $15,000 of nonfarm adjusted gross income and completing the job at the $30,000 level. It does permit, however, an exemption of some farm profits from tax, a matter to be discussed in the next section. It eliminates the negative tax for all but a few, but improvements to be discussed will do away with this problem. It also reaches the do-it-yourself averager. It might also have some effect on the "hobby farmer." On most counts the Metcalf Bill is superior to the EDA. This conclusion suggests that recapture of any sort is a most ineffective tool.

M. Improvement in the Metcalf bill

Having decided that the Metcalf Bill addresses the problem more directly, we should note that a number of changes could be made to the Bill that would improve it substantially. The following might be considered:

(1) Losses on ordinary assets (as distinguished from section 1231 assets) might be included in the category of specially treated deductions. These losses are true economic losses, and there is no reason to disallow them. The failure to include them would appear to be mere inadvertence. These losses probably would not occur in many cases, for most of the farm assets producing ordinary income either have no basis or are held in an inventory. In the former case, a loss could not be realized on the sale, and in the latter case, the taxpayer probably would not be subject to the Bill in any event because he would qualify under the provision excepting taxpayers using inventories and capitalizing capital expenditures.

(2) The Bill now allows an annual allowance of $15,000 if the taxpayer's nonfarm income does not exceed $15,000. For each dollar above $15,000 of nonfarm income, the loss allowance is decreased by one dollar. The obvious purpose is to exempt the so-called legitimate farmer who may have a small outside income. Without this very important feature of the Bill, it would be far less effective. The $15,000 figure may, however, be too high, and the Bill's author might consider adding an alternative phaseout so that two dollars of loss would be disallowed for each dollar of unearned investment nonfarm income of more than $5,000. The present phaseout should remain, and the one permitting the smallest loss would govern if there were any conflict between them.

(3) As previously noted, a number of taxpayers may purchase breeding herds, depreci-

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ate them for a short period, sell the herd, and realize substantial capital gains on the excessive depreciation. While this practice appears improper, there may be an enforcement problem arising from the inability of the Internal Revenue Service to audit all taxpayers. The enforcement problem could be solved automatically by including livestock in the recapture provisions under section 1245. Logically, there is no reason to exempt livestock, and it would prohibit finagling with depreciation, even though the taxpayer elected accrual accounting in order to avoid application of the Bill.

(4) Under the Bill, the farm loss would be permitted to offset other farm income, and it may also be carried over to other years. In neither case does farm income include the untaxed portion of capital gains. A loss of $50 may thus continue to offset $100 of capital gain income in either the year of loss or when used as a carryover. This difficulty could be removed by requiring the loss first to be applied against ordinary income, and any balance then could be applied against capital gain income before the section 1202 deduction or before application of the alternative capital gain rate. The same treatment would be prescribed for carryovers. Thus, in the case in which the farm capital gain in the current year is $100 and the farm loss is $50, the capital gain would be reduced to $50 on which a tax would be paid. If there were also ordinary farm income of $20, the farm loss would be reduced to $30, and the farm capital gain would be $70. Exactly the same treatment would be accorded carryovers. For example, if the current loss is $50 with no capital gain until the following year, when $100 of farm capital gains are realized, the $50 loss carryover would reduce the capital gain to $50 on which a tax would be paid.

An alternative to the suggested treatment would be to require that the farm loss to be an adjustment to the basis of assets. This would necessitate deciding whether to adjust the basis of ordinary income or capital gain assets. It could also raise administrative problems if depreciable property were involved by presenting a new depreciation base each year. If, however, the alternative of a basis adjustment were chosen, presumably the adjustment would not be permitted to create losses but only to reduce gains to zero.

VIII. IN DEFENSE OF THE FAITH

We have spent much time discussing the present farm tax rules and considering solutions. While all of this should make the need for a remedy clear, we would be remiss if we did not grant the opposition an opportunity to be heard. We now turn to it.

The House Committee on Ways and Means has twice held hearings on the farm tax loss problem.[71] The interesting aspect of these hearings is that even those opposed to any proposed changes in the law note that there are abuses of the present scheme. The definition of abuse,[72] however, appears to depend on the speaker. Some speakers defend the subsidy to certain agricultural activity, even though it benefits a taxpayer whose major distinguishing feature is a source of large income from nonagricultural income. The defenses offered by these speakers are to be discussed.

A. The proposed solutions discriminate against farming [73]

One of the more frequent complaints is that directed toward the excess deductions account in 1963. The agrument was made that it offered a special set of rules for farming. Similarly, the same argument was made at the hearings last March.

Undoubtedly, this argument states a truism. There is, however, a reason for this discriminatory treatment. Farming is an industry having a special dispensation from tax accounting provisions otherwise having general application. This dispensation is the use of cash accounting and the expensing of capital expenditures when these procedures do not properly reflect income. It seems proper that losses created by special rules should be treated specially. Under either the Treasury's EDA or the Metcalf Bill, the special treatment of losses may be avoided by giving up the benefit of the special accounting rules. The special treatment ends when the benefit of special accounting rules end. Real economic losses, determined under accounting practices generally applicable to industries other than farming, then would be treated exactly as real economic losses in other industries. They would be fully deductible.

B. Present law is adequate to handle the job [74]

Opponents of change sometimes argue that section 270 of the Internal Revenue Code (which disallows business losses when they exceed $50,000, for 5 consecutive years) along with the hobby cases are adequate to deal with the "farm loss" problem.

The second of these assertions is obviously not true. Indeed the hobby loss was specifically excepted when we started our inquiry. We are dealing with cases in which there is a desire to make a profit, and a profit may well be made. Even so, there is a tax loss that results in a negative income tax result.

As to the other assertion, section 270 is not adequate for many reasons. First, even though not included in taxable income, the deducted one-half of capital gains may be added to farm income to determine whether the loss exceeds $50,000. Perhaps of even greater significance, however, is the exclusion of certain expenses from the expense side (thereby lessening the loss), for the purpose of ascertaining whether section 270 applies but not for the purpose of the tax computation. Any expense that a taxpayer has an option either to capitalize or to expense is excluded. Therefore, the very expenses that create the tax loss [75] do not enter into the computation, which determines whether the section will be applied.

While these liberalities would prevent application of the section to most taxpayers, a final escape hatch is offered by the cash accounting method, which to some extent permits the deferral of both income and expense while also offering the opportunity to anticipate both income and expenses. The combination of these deficiencies permits all but the hopelessly incompetent or blissfully unaware to avoid the application of section 270.

C. Outside capital necessary to agriculture [76]

Another reason strongly stressed for no change in the present tax law is the need for "outside" capital in agriculture. History is cited to support this conclusion. The argument hinges on the plea that, without the tax benefits offered farming (notably livestock), the outside capital would not be attracted and presumably something disastrous to agriculture and to the American consumer would result.[77]

Because this author is not an economist, this article is certainly not a forum in which to argue the economic effect of our many tax provisions. Let me comment briefly, however, on the several facets of this argument as follows:

(1) As noted by one witness in 1963,[78] outside capital has been necessary to agriculture since as early as the Civil War. There was no income tax system then and no tax subsidy. Yet agriculture managed to attract the necessary capital.

(2) Demand for agricultural products, *i.e.*, the ability to sell, not a tax benefit, creates the need for farm capital. If that need continues and if farm prices are inadequate absent the tax subsidy, farm prices will increase to provide an adequate attraction.

(3) By eliminating the "tax farmers" who can survive with a lesser profit than one who does not have outside income, those who are largely devoted to farming may be attracted to stay rather than to be driven out.

(4) There is not likely to be any effect on prices.[79]

(5) If special incentives are needed, certainly Congress can work out a system that avoids the negative income tax and benefits all participants evenly across the board or in a more rational manner than the present scheme, which confers the greatest benefits on those having the greatest amounts of outside income.

D. The rules encourage research development [80]

Often the claim is made that development of purebred seedstock is dependent upon the present tax rules permitting deduction of those costs.

This claim seems to say that there must be a profligate waste of funds in order to secure some very remote benefits resulting from loss operations. If subsidies are needed for research, they can easily be provided without wasting funds on those merely in the business of producing meat. The question is whether we should continue to subsidize the many to benefit a few.

In addition, if these expenses are true research and development expenses, they may be deducted under section 177 merely by electing accrual accounting under the Metcalf Bill. A similar election will avoid the EDA

This argument also presumes that the losses under discussion are true economic losses. That is highly doubtful. First, if the taxpayer has no other farm operation, he is not likely to be engaged in a consistently profitless research program. It undoubtedly would be structured to turn a profit some day. Under the Metcalf Bill, his losses may be carried forward to that day to offset against the gains. If he wants to use them today, he may elect accrual accounting. Under the EDA, the taxpayer's present use of the loss at ordinary income rates is recaptured at the same rate.

Finally, the claim that this is just like the research division of a corporation overlooks the fact that those divisions usually are a part of an integrated operation that produces profits. This differs from the cattle situation in which the tax losses are suffered by an operation not related to another division. In the cattle case, only the tax losses are reported. There are no ordinary income profits. This, of course, indicates that the losses are not economic losses.

E. The present scheme does not produce a revenue loss [81]

The claim is often made that the negative tax effect costs the Treasury nothing. This claim must have either one of two meanings.

First, the economic activity supported by the subsidy increases the federal government's revenue because the subsidy dollars are spent with suppliers of agricultural goods who pay tax on their receipts. Under this view, most expenditure programs would have no cost to the Government. Obviously, it cannot be used as a measure of the revenue loss.

Second, the charge may be that cattle operators pay taxes. Indeed, one witness at the recent reform hearings pointed out [82] that in 1968 his clients had ordinary income of $15,000,000 and capital gains of $4,000,000. Also, his clients' inventories increased by $3,000,000.

One should not, however, conclude that these taxpayers paid any tax on their cattle operations because the witness also pointed out that they spent $20,000,000.[83] An analysis of this example, however, again illustrates

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the problem in the farm area. Take the witness's figures:

Net expenditures	$20,000,000
Less ordinary income	15,000,000
Difference	5,000,000
Less taxable one-half of capital gains	2,000,000
Net tax loss	3,000,000

The farm loss of $3,000,000 applied against other income would certainly produce some tax savings. Thus there was a cost to the Treasury.

The comparison to other businesses is interesting. First, the $3,000,000 loss would be reduced by $3,000,000, which went into the inventory or products to be sold in the future. This would reduce the loss to zero. If the $4,000,000 reported as capital gain were fully taxable, however, as it would be in most other industries, there would be *net profits* of $2,000,000. Instead, the taxpayers in the cattle operations reported a *net loss* of $3,000,000.

F. Any change would force many farmers onto accrual accounting, which is just not possible [84]

This claim is really two contentions. Both appear equally erroneous.

First, not many farmers would be affected by the Metcalf Bill. In 1966 there were 3,000,000 families living on the farm. Less than 4 percent of those families had $15,000 of *gross income from all sources.*[85] The Treasury Staff Studies [86] estimated that 14,000 taxpayers would be affected by its proposal. The Metcalf proposal would reach a larger group because of his phaseout of any deduction at the $30,000 nonfarm adjusted gross income level. In no event, however, could it reach more than 120,000 farmers (4 percent of 3,000,000 families). Thus certainly not a large part of the farm population would be affected. The EDA recommended by the Treasury in 1969 would reach no more than 80,000 farmers.[87]

The second claim that accrual accounting is just not possible also seems refutable. It is now used by some taxpayers. There are inventories that permit an approximation of the cost of raising animals. While they may have their problems, they at least may be employed and would more accurately reflect income than the present scheme, particularly if the changes discussed above were adopted.

G. The present scheme is a deliberate subsidy carefully designed by Congress [88]

Many proclaim that the interplay of current deduction and capital gains is a well thought out subsidy. While there may be some superficial appeal to this argument, it will not withstand analysis.

The farm problem under discussion arises out of (1) deducting capital costs and (2) conferring capital gains on certain assets. As was traced in some detail above, the first aspect of this combination developed very early in the administration of the income tax law. It was also developed by an administrative agency, which had no authority to conceive and implement plans for the distribution of federal money. It does not seem likely that this portion of the present law had any deliberate conception as a subsidy.

The capital gain portion of the combination seems equally as accidental. The 1942 amendment, which first brought cattle into the capital gain arena, certainly makes no reference to the subsidy impact.

After doubt and controversy arose in the 1940's, the farm interests succeeded in getting legislation in 1951. But neither in 1950 nor 1951 was there any discussion of the subsidy effect of conferring capital gains on livestock. The plea rather seemed to rest on clearing up confusion and giving the treatment to farm assets that was accorded other businesses.

Not until 1952 was there any discussion of the tax policy effect of these provisions.[89] While the Treasury's presentation of the excess deductions account in 1963 and in 1969 focused on the two aspects at the heart of the farm loss problem, they do not put the problem in its proper posture. These aspects are (a) the use of farm losses to offset other income and (b) the production of a tax profit when there is an economic loss.

The second aspect was universally denounced by the witnesses who appeared before the Ways and Means Committee in 1963 and in 1969. It hardly seems likely that failure to take action condones a system achieving that result. Rather, in the words of Representative Watts,[90] there was difficulty in separating the sheep from the goats.

As to the first point, the Treasury seems content to show that the losses, artificially produced, are used to offset income of another endeavor. While that statement is accurate, it does not demonstrate that in fact a profitable operation is not only paying no tax but is indeed receiving a subsidy from the Treasury in the form of reduced taxes on other income. Certainly, the latter statement of the problem is hard to defend and truly illustrates what is happening. Short of a presentation in this fashion, it is doubtful that one can say that Congress has condoned it.

In 1952 only the Senate Finance Committee considered the matter, and in 1963 only the House Ways and Means Committee considered it. The failure of these committees to act on the basis of the not well directed testimony of the Treasury should hardly be construed as congressional approval of a subsidy system, particularly when that subsidy is not available to the individual engaged only in the activity, which, if the argument were accepted, Congress intended to subsidize. In 1969, the House took action by incorporating the EDA into H.R. 13270. While, as later discussed, the provision adopted would likely be largely ineffective, it does manifest a notion that this subsidy has difficulties, which require pruning, if not elimination.

IX. CONCLUSION

Our existing farm tax laws permit taxpayers having income from other sources to invest in farm assets to a large extent at the expense of the public fisc. While it has been argued to be a deliberate subsidy to farmers, this seems doubtful on the record. It also seems implausible that Congress intended a subsidy that has little or no value to one having only the kind of income that it intended to benefit. The argument would mean that one hand giveth while the other taketh, by inducing unfair competition from the "tax farmer" who because he has sources of other income can subsist on little or no economic profit. Thus, even if Congress did intend the present scheme as a subsidy, it should be recast in a more rational form.

This subsidy is a negative income tax because the tax savings resulting from the premature deduction of capital costs against ordinary income is greater than the capital gain tax incurred on the sale of the property. There are now pending several proposals that measurably improve the tax law. None of them attacks the problem directly. Rather, they attempt to preserve some part or all of the tax benefits for selected taxpayers. As a consequence, they are complex. Since the complexity arises from an effort to maintain simplicity for the vast majority of farm taxpayers, the burden of complexity will fall only on those who want to retain whatever benefits remain after enactment of the remedial legislation.

Of the proposals pending, the Metcalf Bill offers the best designed solution. It is directed to the current offsetting of artificial farm tax losses against nonfarm income. It does not concede the propriety of this offset and consequently need not seek to impose a penalty at some later date, when the capital nature of the earlier losses is finally revealed. It is well designed to limit its application to artificial losses. It does not present the estate planning possibilities of some of the other solutions, and it does seek to exempt many farmers.

Since the Metcalf Bill appears to offer a better solution, it is lamentable that the Treasury's 1969 proposals did not endorse it, as did the previous Administration. Rather, the Treasury opted to present a solution which *may* accomplish many of the objectives. But by rejecting the Metcalf Bill proposal and advancing its own, the Treasury will find that effort, which could have been expended on passage of a solution, will be directed to demonstrating the superiority of its solution. This may prove a difficult, if not impossible task, that will undoubtedly annoy many of the proponents of the Metcalf Bill. Therefore, the fight may degenerate to one between those who want some action rather than between that group and those who have prospered from and are interested in maintaining the *status quo*. One doubts that the principles, which led to rejecting the Metcalf Bill, could be worth the loss in solidarity. Indeed, the principles, which militated so strongly against the Metcalf Bill, are not clear.

Be that as it may, the House Committee on Ways and Means at one time tentatively adopted the EDA substantially as recommended by the Treasury.[91] While it might have achieved some needed reform, it undoubtedly would have presented the opportunity for the artful tax lawyer to plan around the EDA. But the Bill reported out by this Committee and passed by the House appears to be about as an ineffective version of the Treasury's suggestions as could be envisioned. As passed by the House, taxpayers having nonfarm adjusted gross income of less than $50,000 would not be required to keep an EDA. Furthermore, farm losses would be entered into the account only to the extent that they exceeded $25,000.

In 1964 there were about 18,000 tax returns showing nonfarm adjusted gross income in excess of $50,000. About 3,000 of these taxpayers turned a farm profit with the balance reporting losses. Thus only about 15,000 farm returns showing farm losses meet the outside income test. Yet in the same year, there were about 1,109,000 farm returns (out of 3,000,000) showing a farm loss. As a consequence, the Bill would affect less than 0.5 percent of all form returns and less than 1.5 percent of farm returns showing a tax loss.[92] This relatively insignificant impact will be even further reduced by the exception of any loss, or part thereof, that does not exceed $25,000. The fairest guess seems to be that the proposal might have some impact on as many as 4,000 or 5,000 tax returns.[93] The revenue estimate for the long run is $20 million.[94] This compares with a revenue estimate of $50 million for the Treasury's recommended EDA [95] and $205 million if the Metcalf Bill were enacted.[96] The Treasury's proposal might have reached as many as 75,000 returns in any year,[97] while the Metcalf Bill would have reached around 14,000 taxpayers,[98] about the number of returns which meet the nonfarm adjusted gross income test under the Bill, but with an impact over ten times as great when revenue estimates are considered. These comparisons strongly suggest that H.R. 13270 would reach only the visible portion of the iceberg.[99]

The amount of revenue raised and the number of taxpayers affected are not, of course, the important criteria by which to measure a provision dealing with the farm loss problem. The question is whether the proposal will significantly reduce the federal subsidy going to taxpayers having both

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(a) certain kinds of farm investments and (b) substantial nonfarm income while providing relatively insignificant benefits to those who do not have the nonfarm income. The overall purpose thus is to discourage some investments in farm assets by improving the equity of the tax structure. On this ground, the Bill passed by the House seems destined to fail. It will permit all comers to incur tax losses up to $25,000 each year. An investment of this size may have substantial capital gain possibility.

Finally, the purpose of restricting the operation of the Bill to those taxpayers having a coincidence of $50,000 in nonfarm adjusted gross income and a farm loss in excess of $25,000 is not clear. It seems unlikely that a "legitimate farmer" cannot be more precisely defined. Thus the high dollar limits seem not to have a definitional purpose. Nor is the abuse limited to taxpayers having this happy combination of circumstances. But even if it were, under the Bill, they are permitted to exclude from the EDA the first $25,000 of farm loss each year. Since the justification for these limits is not immediately apparent and since the Bill does not appear altogether effective, it seems likely that Senator Metcalf will continue to press his solution, and the issue will be joined in the Senate.[109]

Regardless of the outcome, there would appear to be some learning here that may be applicable beyond the farm field. We noted at the beginning that other industries such as oil and gas, real estate, and timber may offer much the same opportunity for tax avoidance as does investment in some farm assets. The benefits in these areas are also predicated upon premature and excessive deductions, and repair of the tax law in these areas is badly needed.

The foregoing analysis is helpful in suggesting guidelines and means of testing those solutions that may be put forward for these other areas. The problem must be precisely identified to expose the source of the difficulty. At that juncture, two paths will be offered. The problem may be attacked frontally as, for example, proper cost capitalization attacks the farm loss problem. If that route is not chosen and if excessive deductions are the problem, there are two means of dealing with them. First, the deductions may be blessed when claimed with a recapture of them at a later time. The other is to operate directly on the deduction by limiting its benefit either to a specified group or in a specified amount. Either means is complex, but there would seem to be no question but that the former, a recapture of prior excessive deductions, is a most inappropriate way of dealing with excessive deductions. Thus, unless all other techniques are exhausted and rejected on some more fundamental ground, the concept of recapture should not be raised as a solution.

FOOTNOTES

[1] T.D. 2153, 17 TREAS. DEC. INT. REV. 101 (1915), *as amended*, T.D. 2665, 20 TREAS. DEC. INT. REV. 45 (1918).

[2] Treas. Reg. 33, art. 4 (1917).

[3] United States v. Catto, 384 U.S. 102, 110 (1966).

[4] Treas. Reg. 33, art. 4 (1917).

[5] Treas. Reg. 45, art. 110 (1919).

[6] *See* Ribbon Cliff Fruit Co., 12 B.T.A. 13 (1928); Harry B. Hooper, 8 B.T.A. 397 (1927).

[7] H.R. REP. No. 2333, 77th Cong., 2d Sess. 53–54 (1942). *See* Wells, *Legislative History of Treatment of Caiptal Gains Under the Federal Income Tax 1913–1948*, 2 NAT'L TAX J. 12, 31–32 (1949).

[8] Wells, *supra* note 7, at 32.

[9] S. REP No. 1631, 77th Cong., 2d Sess. 49–50 (1942).

[10] I.T. 3666, 1944–1 CUM. BULL. 270. I.T. 3712, 1945–1 CUM. BULL. 176; Mim. 6660, 1951–2 CUM BULL. 60; Special Ruling by the Commissioner of Internal Revenue, CCH 1948 STAND. FED. TAX REP. ¶ 6091 (Aug. 4, 1947).

[11] 173 F.2d 339 (8th Cir. 1949).

[12] In a livestock operation, there is an annual crop of young animals. Since few farmers have either the capacity or the desire to increase their operation by the full amount of each crop, some part of the livestock must be sold. Normally those animals least fitted for the operation are sold. The process of selecting the animals to be sold is referred to as "culling," and the animals so selected are "culls."

[13] H.R. REP. No. 3124, 81st Cong., 2d Sess. 28 (1950) makes clear that Senate Amendment No. 82 was rejected largely because it was limited to cattle. It also expressed hope that the Treasury would administer the law in accordance with the *Albright* decision.

[14] Revenue Act of 1951, § 324. The Act stated that livestock held more than 12 months regardless of age and held for draft, breeding, or dairy purposes would be treated as property used in the trade or business for the purpose of § 117(j) of the Internal Revenue Code of 1939, now § 1231 of the Internal Revenue Code of 1954.

[15] S. REP. No. 78, 82d Cong., 1st Sess. 41 (1951).

[16] The letter pointing out that the deduction of livestock raising costs from ordinary income while allowing capital gains treatment for the sale of breeding livestock distorted income downward by $275,000,000 a year and gave a windfall to those farmers and ranchers then using cash basis accounting. Letter from Secretary of Treasury Snyder to the Chairman of the Senate Finance Committee, 98 CONG. REC. 8307, 8308 (1952), also reported in CCH 1952 STAND. FED. TAX REP. ¶ 6239 (June 27, 1952).

[17] *See* notes 13, 14 & 15 *supra*.

[18] *See* HOUSE COMM. ON WAYS AND MEANS and SENATE COMM. ON FINANCE, TAX REFORM STUDIES AND PROPOSALS OF THE U.S. TREASURY DEPARTMENT, 91st Cong., 1st Sess. 151, 154 (1969) [hereinafter cited as TREASURY STUDIES]; HOUSE COMM. ON WAYS AND MEANS, THE PRESIDENT'S 1963 TAX MESSAGE, 88th Cong., 1st Sess. 144–45 (1963) [hereinafter cited as 1963 TAX MESSAGE]; letter from Secretary Snyder, *supra* note 16. For a discussion of "hobby farming" see Sweeney, *The Farm Loss Deduction*, 53 A.B.A.J. 447 (1967), and Dickinson, *The Farm Loss Deduction: A Reply*, 53 A.B.A.J. 1111 (1967).

[19] Reported on Schedule F, Internal Revenue Service form 1040, and which would offset other fully taxable income.

[20] This is the taxable portion of the capital gain, which is reached by reducing the entire gain by the deduction allowed by Internal Revenue Code of 1954, § 1202 so that the taxable portion is only 50% of the gain. This one-half of the gain is taxed either at the taxpayer's marginal tax rate or at a 50% rate whichever is lower. In cases, in which the 50% rate (resulting in a tax of 25% on the gain) is lower, the taxpayer pays the *alternative tax on capital gains*. This additional rate limitation on long term capital gain (in practical effect of benefit only to those taxpayers having sufficient income to be in a tax bracket above 50%) would be removed by § 511 of H.R. 13270, 91st Cong., 1st Sess. (1969) (passed by the House and referred to the Senate Finance Committee on August 7, 1969). Conclusions herein, which assume the alternative tax computation, must be considered in light of this possible change in the law. The Treasury Department has announced opposition to the elimination of the alternative tax. *See Hearings on Tax Reform Act of 1969 Before the Senate Comm. on Finance*, 91st Cong., 1st Sess. 6 (interim manuscript) (Statement of David M. Kennedy on Sept. 4, 1969).

The foregoing analysis applies to individuals only. Corporations receive substantially the same benefit under a slightly different statutory framework. Section 461 of H.R. 13270 would raise the corporate alternative tax rate to 30%. While the farm loss problem is largely related to individuals, the rate of corporate expansion into farming in the last several years has grown. *See Hearings Before the Subcomm. on Monopoly of the Select Comm. on Small Business*, 90th Cong., 2d Sess. (1968). *See also* Thomas, *Corporate Sodbusters*, Barron's, Aug. 5, 1968, at 3, col. 1; Thomas, *Lure of the Land*, Barron's, Aug. 19, 1968, at 3, col. 1.

[21] Reported on Schedule D, Internal Revenue Service Form 1040, as a sale of a capital asset.

[22] This usually will be the taxpayer's effective tax rate multiplied by the difference between the loss and the taxable one-half of capital gains. When the taxpayer uses the alternative tax on capital gains, the benefit is greater.

[23] These results are proportionately greater because the tax rate on the taxable one-half of capital gains is limited to 50%, while the loss is fully deductible against ordinary income taxed at more than the 50% rate. Also note that the top tax rate of 70% would be reduced to 65% by H.R. 13270, 91st Cong., 1st Sess. (1969).

[24] The parentheses indicate that a positive tax is paid by the taxpayer. For the 0% taxpayer, the taxable income would be taxed at the lowest rate if the income was not eliminated by itemized deductions and personal exemptions. For the 30% and 50% taxpayer, the profit for tax purposes is subjected to capital gain rates. The 70% taxpayer continues to show a net payment from the Treasury.

[25] Since no amount of tax for this taxpayer is shown in Chart B, the total economic profit has not been reduced by any tax. The tax would be $25 multiplied by the effective tax rate.

[26] The income might be realized in another year because the loss may become a net operating loss deduction in another year.

[27] There are basically six areas in which the farm loss problem may arise. In addition to those discussed in the text, they are:

(a) The do-it-yourself averager, who shifts income and expense from year to year through the use of cash accounting. For example, a taxpayer, who desires to reduce taxes in a particular year, might purchase a large amount of supplies that would not be consumed until the following year. The deduction would be claimed in the year of purchase, and no adjustment would be made for the goods on hand at year's end. Similarly, a taxpayer might sell products and defer payments until the following year. The income would be reported by a cash basis taxpayer only in the following year. The extent of the premature deductions, which may be taken, is not clear. Recent cases indicate that the taxpayer faces increasing judicial resistance to this tax limiting approach. For cases concerning supplies see Lillie v. Commissioner, 370 F.2d 560 (9th Cir. 1967), *aff'g per curiam*, 45 T.C. 54 (1966); Shippey v. United States, 308 F.2d 743 (8th Cir. 1962); Cravens v. Commissioner, 272 F.2d 895 (10th Cir. 1959); Harry W. Williamson, 37 T.C. 910 (1962); John Ernest, 32 T.C. 181 (1959), *acquiesced in*, 1959–2 CUM. BULL. 4. *See also* Pauley v. United States, 63–1 U.S. Tax Cas. ¶ 9280 (S.D. Cal. 1963); Rev. Rul. 170, 1953–2 CUM. BULL. 141 (intangible drilling expenses); Rev. Rul. 58–53, 1958–1 CUM. BULL. 152 (personal services under § 212). Prepaid alimony is not deductible. George R. Joslyn, 23 T.C. 126 (1954), *rev'd and rem'd in part and aff'd in part on other grounds*, 230 F.2d 871 (7th Cir. 1956). Nor are prepaid medical expenses deductible. Robert S. Bassett, 26 T.C. 619 (1956). Deduction of prepaid interest, long considered a somewhat special case, is also now subject to severe limitations. *See* Rev. Rul. 68–643, 1968–2 CUM. BULL. 76. While Lillian Bacon Glasswell, 12 T.C. 232 (1949), *acquiesced in*, 1949–2 CUM. BULL. 2, and Estate of Aaron Lowenstein, 12 T.C. 694

(1949), *acquiesceding*, 1949–2 CUM. BULL. 2, permit deduction of taxes on current income even though paid prior to the time the taxes became due, these cases clearly rely on a lack of distortion in income. Indeed, they represent cases in which income is perfectly matched against the taxes imposed upon it. This liberality in timing income and expenses seriously weakens § 270 as well.

(b) The hobby farmers, who are engaged in activity which they refer to as farming but for whom the profit motive is not the inducing factor. This presents the question of subjective intent, which is usually litigated by the Internal Revenue Service. For excellent summaries of the hobby loss cases see 18 SECTION OF TAXATION, ABA, ANNUAL REPORT, No. 4, at 275 (1965); 19, No. 4, at 149 (1966); 20, No. 4, at 143 (1967); 21, No. 4, at 768 (1968). This problem is not one unique to the field of agriculture, and legislation designed specifically for it should not be confined to agriculture. Any solution to the other farming problems should be applicable equally to hobby farming. Thus solutions of the farming problem need not be tailored to deal with the hobby problem.

(c) The statutory provisions which allow farmers to deduct expense which all would concede to be capital. These are § 175 (soil and water conservation expenditures), § 180 (expenditures for fertilizer), and § 182 (expenditures for land clearing). The last section is limited to 25% of *taxable income*. Section 175 is limited to 25% of *gross income* from farming with an unlimited carryover. The charge is often made that § 175 permits the purchase of rundown farm land, which produces gross income but little or no net income, and the rebuilding of it by deductible expenditures. In many cases, the land is then alleged to be held for subdivision and not for farming purposes. This aspect is merely another facet of deducting capital expenditures and perhaps should not be placed in a separate category. It, however, is not as widespread as the problems discussed in text and is relegated to a footnote to concentrate the text on the two major aspects of the farm problem.

(d) The abuser of accelerated depreciation, who purchases animals at a very high price, claims accelerated depreciation on them, and sells well before the end of the depreciable life is reached. Since the animals will be treated as breeding animals and since there is no recapture of depreciation on livestock, the gain may be reported as capital gain. Solving this abuse would seem to be largely a matter of enforcing the present law. Depreciation below a realistic salvage value is not permitted. Salvage value must be established by reference to the expected useful life of animals to the taxpayer. This would seem to be an avenue unsuccessfully traveled by Hertz Corporation v. Commissioner, 364 U.S. 122 (1960). *See* Massey Motors, Inc. v. United States, 364 U.S. 92 (1960). This problem is also another facet of deducting capital expenditures. The difference is that the excessive deduction may be spread over a number of years rather than solely in the year when incurred. Again, this problem is also relegated to this footnote to avoid digression from the two major areas of abuse.

[28] These crops include citrus, peaches, apricots, cherries, grapes, and nuts. There are undoubtedly others. The foregoing, however, indicates the widespread nature of the area in which these costs are incurred.

[29] Treas. Reg. § 1.162–12 (1961).

[30] In Robert L. Maple, 27 CCH Tax Ct. Mem. 943 (1968), the cost of raising orange trees to a stage when they could be planted in the grove was $2.75 per tree. Of this amount only $.42 was required to be capitalized. After planting in the grove, the trees may take from four to eight years to bear commercial quantities of fruit. Costs during that period are also deductible.

[31] For use of this terminology see Estate of Richard R. Wilbur, 43 T.C. 322 (1965).

[32] In the year of sale, the taxpayer will report:

Proceeds of sale of sec. 1231	
Assets	$23,100
Basis	12,000
Gain	11,100
Tax at 25% rate	2,775

[33] Treas. Reg. § 1.162–12 (1961) permits farmers to deduct livestock raising costs and makes no reference to the taxpayer's method of accounting. Certainly the option to deduct these expenses is available to the cash basis taxpayer. As to accrual basis taxpayers who must use inventories, the answer is not so clear. The option is not available to a taxpayer who uses the unit livestock method because he must include raised livestock in his inventory even though held for draft, breeding, or dairy purposes. *See* Treas. Reg. § 1.471–6(f) (1964). This requirement was upheld in United States v. Catto, 348 U.S. 102 (1966). Taxpayers using other methods of inventory valuation are not required to include raised animals in inventory. This has led at least one author to argue that the option to expense raising costs is available to these taxpayers. *See* Hawkinson, *Farm Expenses and General Accounting*, 22 TAX L. REV. 237, 257 (1967). He adds that *United States v. Catto* throws doubt on this conclusion. Since *Catto* merely upheld longstanding regulations, it seems doubtful that it would support a requirement that all taxpayers, even though not specifically mentioned in the regulations, must inventory the cost of raising draft, breeding, and dairy animals. Thus it is likely that only the taxpayer using the unit livestock method must inventory these costs, and if they are inventoried, they are deducted unless capitalized. Whether these costs must be capitalized, if not inventoried, by the accrual basis taxpayer is not clear. Treas. Reg. § 1.61–4 (1963), dealing generally with reporting by cash and accrual basis farmers, might be argued to require capitalization of these costs by accrual basis farmers. Treas. Reg. § 1.61–4(b) (1963), applicable only to accrual basis farmers, states that draft, breeding, or dairy livestock "may be included in inventory . . . instead of being treated as capital assets subject to depreciation." This language may imply that livestock raising costs must be capitalized if not inventoried. The Internal Revenue Service seems never to have so construed this provision. Thus it seems likely, but not clear, that an accrual taxpayer using some method other than the unit livestock method may choose to deduct livestock raising costs, to include the costs in inventory, or to capitalize such costs. Presumably, once the farmer makes a choice, he must continue with that method.

[34] INT. REV. CODE of 1954, § 1231(b)(3). Race horses qualify under the more general language of section 1231(b)(1) and need only be held more than six months.

[35] The case law dealing with culls is extensive. *See* McDonald v. Commissioner, 214 F.2d 341 (2d Cir. 1954), *on remand*, 23 T.C. 1091 (1955), *acquiesced in*, 1956–1 CUM. BULL. 4. *See also* C.A. Smith's Estate, 23 T.C. 690 (1955), *acquiesced* in, 1956–1 CUM BULL. 5.

[36] Included as livestock are sheep, goats, dogs, foxes, minks, and other exotic little creatures such as chinchillas, Treas. Reg. § 1.1231-2(a) (1965). See William W. Greer, 17 T.C. 965 (1951), *acquiesced in*, 1951-1 CUM. BULL. 4. *See also*, U.S. TREASURY DEPARTMENT, FARMER'S TAX GUIDE 24 (ed. 1969).

[37] An excellent illustration of the artificial losses and their effect on taxes on income from other sources may be found in a letter from the National Livestock Tax Committee to Chairman Wilbur Mills of the House Ways and Means Committee, Mar. 28, 1969, for inclusion in the hearings record of the recent tax reform hearings before the Committee. HOUSE COMM. ON WAYS AND MEANS, TAX REFORM, 1969, 91st Cong., 1st Sess. 2056, 2059–60 (1969) [hereinafter cited as TAX REFORM 1969]. *See also* Pitcairn & Chandler, *Tax Advantages of Cattle Operations*, 1 P-H TAX IDEAS ¶ 17,013, (1968).

[38] In addition to solutions discussed in text see, *e.g.*, Sweeney, *The Farm Loss Deduction*, 53 A.B.A.J. 447 (1967), which advocated amending § 165 to disallow a farm loss unless there was a reasonable expectation of profit, and five consecutive loss years would have been considered as proof that the expectation was not reasonable in absence of clear and convincing evidence. This solution is technically deficient since there is no statutory definition of a farm "loss," and the "loss" arises usually because § 162 deductions (not § 165) exceed ordinary income. It is premised also on the belief that the farm loss problem may be one of "hobby losses." The suggestion is properly rejected in a reply article. Dickinson, *The Farm Loss Deduction: A Reply*, 53 A.B.A.J. 1111 (1967). *See also* Hjorth, *Cattle Congress and the Code—The Dangers of Tax Incentives*, 1968 WIS. L. REV. 644, 670, in which the author proposes a § 1245 recapture and denial of § 1231 treatment in absence of a failure to capitalize growing costs. This is a good proposal but does not reach citrus groves, although it could be so broadened. It, however, does raise the accounting problems discussed in text. *See also* TAX REFORM 1969, at 2056 (letter from the National Livestock Tax Committee), which suggests a § 1245 recapture and lengthening of lives for an asset to qualify under § 1231. As is demonstrated in attachments to this letter suggesting this approach, considerable tax subsidy remains. Thus this proposal must be adjudged largely ineffective.

See also S. 1560, 91st Cong., 1st Sess. (1969), introduced by Senator Miller. This bill would limit farm deductions of nonfarmers to farm income except in the case of an individual whose principal residence is on a farm. In such case, the limit on farm deductions would be the total of (a) farm income, (b) wages and salaries, (c) timber income, and (d) royalties derived from property. A farmer would be entitled to claim all his deductions. A farmer is defined as a taxpayer whose net income from farming for the three preceding years equals two-thirds of the total net income for these years. For this purpose net farm income includes the full amount of gain on the sale or exchange of assets. Total income, however, excludes all those gains except those incurred on farm assets. Certain deductions are not disallowed even though attributable to the farm. They are deductions arising from (a) general casualty and weather conditions, (b) experimental farming, and (c) egg or broiler operations. Also, farms (a) acquired from decedents, (b) acquired by foreclosure, or (c) operated by an estate are excepted for limited periods. Provisions are made to consolidate sole proprietorships with partnerships and Subchapter S farm income and losses.

S. 1560 has many weaknesses. First, it raises difficult definitional problems. What is a principal residence? What is a farm on which the principal residence must be located? This differs radically from the problem of defining farm income and expense—a feature common to many proposals. Second, a farmer may continue to offset nonfarm income, e.g., wages, by farm losses. Additionally, a nonfarmer may do so if he lives on a farm. There would appear to be no policy supporting this exception. Third, the sponsor concedes the definition of "net farm income" and "total income" are designed to prevent, at least to some extent, application of the Bill to livestock—probably the worst abuse. Fourth, the definition of a farmer depends on a new concept of farm income that is not the same as that set out for filing of a declaration of estimate tax. Thus a new category of farmers would be created. Fifth, this approach is not directed toward either of the causes of the problem, i.e. capital gain and simplified ac-

counting rules. Its effect would thus be difficult to predict.

As to some other approaches, some redefinition of assets qualifying for § 1231 might also be attempted. This does not appear fruitful so long as their costs can be fully deducted.

[39] *See* Hawkinson, *supra* note 33.

[40] *See* cases cited note 6 *supra*.

[41] Full cost accounting is used by some farmers for financial reporting purposes even though not for tax purposes. Lenders may also require that financial statements be prepared on at least a modified accrual basis. Thus techniques are available and in use. If, as suggested later in the text, more simplified inventory methods are developed, one might question whether they should be available to taxpayers who now employ better procedures for nontax purposes while reporting taxable income on the special farm accounting rules. Yet denial of these simplified methods could create a competitive edge that does not now exist.

[42] Under Treas. Reg. § 1.471–8 (1958), taxpayers engaged in selling at retail may establish an inventory by reducing selling prices in accordance with an established formula to reach approximate costs. While agricultural products normally would not have standard markups, a similar procedure might be used by reducing market value by a reasonable profit margin.

[43] One might also consider the constitutional implications of forcing recognition of profit before there is a realization. *See, e.g.*, Eisner v. Macomber, 252 U.S. 189 (1920).

[44] Treas. Reg. § 1.471–6(f) (1958).

[45] Treas. Reg. § 1.471–2(f)(4) (1958). "LIFO" is a shorthand designation for the Last-In-First-Out method of inventory valuation.

[46] Senator Jack Miller of Iowa realizes that unit livestock valuations are unrealistic and would not close off the farm loss problem in the livestock area. TAX REFORM 1969, at 2001, 2003 (statement of Senator Miller).

[47] *See* S. 1560, 91st Cong., 1st Sess. (1969); S. 500, 91st Cong., 1st Sess. (1969); H.R. 5250, 91st Cong., 1st Sess. (1969); H.R. 4257, 91st Cong., 1st Sess. (1969).

[48] Even ideal solutions may not entirely handle the problem. Under a system requiring that all costs be capitalized, there would remain a problem of reporting gain on some assets as capital gain, even though the assets are held for sale to customers in the ordinary course of business. For example, breeding livestock produce a crop each year. Some part of the crop may be retained for breeding purposes, and some part, usually the vast majority of it, will be sold in the ordinary course of business. At the birth of the animal, a taxpayer does not know into which category particular animals fall, and the purpose for which they are held is ambiguous. This ambiguity is resolved under present law by requiring that each animal be held at least twelve months for long-term capital gain treatment to be allowed. That period is unsatisfactory because the ambiguity of purpose is generally not resolved during the twelve months. Similarly, questions could arise concerning the cost of maintaining female animals during the period of gestation. These costs would seem to be capital costs of the young animals. But if the mother also had some other utility such as use as a dairy cow, the taxpayers would likely argue that the costs were deductible as costs of producing milk.

[49] 1963 TAX MESSAGE 144. The newer version was presented in TAX REFORM 1969, at 5047 (the President's 1969 Tax Message).

[50] S. 500, 91st Cong., 1st Sess. (1969). Its genesis was S. 2613, 90th Cong., 1st Sess. (1967). The 1967 Bill was revised in accordance with a Treasury report on S. 2613, 114 CONG. REC. 8782 (daily ed. July 17, 1968), and reintroduced, S. 4059, 90th Cong., 2d Sess. (1968). It was further revised before introduction in 1969.

[51] The theory undoubtedly is the same as that embodied in two other statutory recaptures, § 1245 and § 1250. There have been excessive deductions against ordinary income. When income is realized, it should be treated as the excessive deductions and taxed at ordinary income rates. This notion of merging two transactions is familiar to the case law. *Compare* Arrowsmith v. Commissioner, 344 U.S. 6 (1952), *with* William L. Mitchell, 52 T.C. No. 21 (Apr. 30, 1969). *See also* United States v. Skelly Oil Co., 394 U.S. 678 (1969).

[52] The House Committee on Ways and Means tentatively adopted the excess deductions account in roughly the form described in text. *See* HOUSE COMM. ON WAYS AND MEANS, PRESS RELEASE ANNOUNCING TENTATIVE DECISION ON TAX REFORM SUBJECTS BY CHAIRMAN MILLS (May 27, 1969). Changes from the Treasury's proposals are for present purposes unimportant. The House also incorporated a version of it in H.R. 13270, 91st Cong., 1st Sess. (1969). The Treasury Department presented yet a third model when Assistant Secretary Cohen testified before the Senate Finance Committee on September 4, 1969. *See Hearings on Tax Reform Act of 1969 Before the Senate Comm. on Finance*, 91st Cong., 1st Sess. 39–42 (interim manuscript) (statement of Edwin S. Cohen on Sept. 4, 1969). This House version is discussed later in the text. There were also other parts to the Treasury farm proposals including a § 1245 recapture of excessive depreciation on livestock, an extension of lives for draft, breeding, and dairy animals and race horses to qualify under § 1231(b) and vast and complex changes to § 270. These appear mainly to have been designed to sew up the loose edges left after application of the excess deductions account. The need for these other provisions is discussed along with the proposals. TAX REFORM 1969, at 5414.

[53] One difficulty with this approach arises when considerable farm income is realized before there is a loss. If the income followed the loss, it would reduce the amount in the EDA but apparently not if it precedes the loss, unless there is to be a negative EDA. As a result, timing of income will have a substantial impact.

[54] TAX REFORM 1969, at 5495 (statement of Edwin S. Cohen, Assistant Secretary of the Treasury for Tax Policy).

[55] TAX REFORM 1969, at 5178. As discussed later in the text, the gain mentioned by the Treasury's Technical Explanation probably includes the excess of fair market value over basis if the disposition is one that is not taxable under present law. If not, there is substantial room for avoidance by transferring § 1231 property to a related taxpayer who would have no EDA. As finally adopted by the House in H.R. 13270, 91st Cong., 1st Sess. (1969), the rules for transfers are complex. They do not close the possibility of tax avoidance through transfers but may represent a reasonable approach to a difficult problem inherent in the recapture concept.

[56] Under the tentative decision of the Committee on Ways and Means, gain on buildings would be excepted. Gain on farm land would be subject to recapture only to the extent of § 175 and § 182 expenses (soil and water conservation expenses and land clearing expenses that would be capitalized absent these provisions but not including § 180 fertilizer costs, which would also be capitalized absent § 180) incurred within five years before the sale with respect to the property sold. *See* PRESS RELEASE BY CHAIRMAN MILLS, *supra* note 52.

[57] At the hearings on the farm loss problem, Representative BYRNES expressed concern about the effect of the Bill on a feed lot operation when there was a sudden drop in price. TAX REFORM 1969, at 2149. If the category of assets were expanded to include ordinary income assets, the change would handle the situation by allowing the loss. Another answer may be that feeder operations may not be farming. Moody-Warren Commercial Co., 29 B.T.A. 887 (1934).

[58] In this context, we may assume that a part of each animal crop is sold and reported as ordinary income but that the proceeds of such sales are $100 less than the costs of the entire farm operation. In the following year, culls from the prior year's crop will be sold at $110.

[59] Some might argue that the evil is the foregone revenue to the Government and that to measure the Bill's effectiveness from the Government's viewpoint, its borrowing rate should be used. While the choice may not be clear, the value to the taxpayer is our concern here, and that is at his borrowing rate.

[60] INT. REV. CODE OF 1954, §§ 1301–04.

[61] On this analysis, a four-year development followed by sale in the fifth year would achieve the greatest tax savings, all other factors remaining the same. There would be four years of deferral, but income would be spread over five years. As suggested in the text, however, the benefits of averaging may not be significantly reduced by running beyond the five-year averaging period.

[62] This is $5,000 multiplied by the difference between the top tax bracket of 70% and the top capital gain rate of 25%. This benefit would be less under H.R. 13270, 91 Cong., 1st Sess. (1969), which would reduce the top ordinary rate to 65% and eliminate the alternative tax so that the top capital gain rate would be 32.5%. Under that Bill, the $2,250 would be reduced to $1.625.

[63] Interestingly, the racing industry is not satisfied even with this unstated exception. Under the tentative decisions of the House Committee on Ways and Means, horseracing and horse breeding would be treated as a combined operation. *See* PRESS RELEASE BY CHAIRMAN MILLS, *supra note* 52. Section 211 of H.R. 13270, 91st Cong., 1st Sess. (1969), also embodied this concept. This will permit tax losses from breeding operations to be offset against racetrack winnings.

[64] If the minimum tax discussed in TREASURY STUDIES, *supra* note 18, at 132 were adopted, the rates on capital gain would be fully progressive when it applied. *See* note 21 *supra*, which points out that H.R. 13270 would similarly eliminate the alternative tax.

[65] Under the Administration's program presented on April 21, 1969, a charitable contributions deduction would be denied to the extent of unrealized gain on any property, which if sold would yield ordinary income. TAX REFORM 1969, at 5152, 5492. *See also* TREASURY STUDIES, *supra* note 18, at 178.

[66] If the EDA is carried over to the transferee, it presumably would reduce the EDA in the hands of the transferor. Thus a transfer to a lower bracket taxpayer may present an opportunity to reduce the ordinary income potential to the transferor.

[67] *See* 1963 TAX MESSAGE 1541, in which returns of two or three percent of livestock are estimated. There is little reason to think that returns have improved. *See Hearings on Tax Reform Act of 1969 Before the Senate Comm. on Finance*, 91st Cong., 1st Sess. 32 (interim manuscript) (statement of Claude M. Maer, Jr. on behalf of the National Livestock Tax Comm. on Sept. 22, 1969).

[68] *See* note 27 *supra*.

[69] Nontaxable transfers of capital gain property may offer substantial opportunity to avoid the EDA. There would appear to be some roadblocks to the transferee's achieving a capital gain rate. First, in the case of livestock, it must be either draft, breeding, or dairy livestock in the hands of the transferee. The fact that the livestock had such character in the hands of the transferor would not establish the same character for the transferee. Second, an immediate sale by the transferee might be viewed as a sham with the sale proceeds being attributed to the transferor. Third, the transferee may himself have an EDA, especially if he retains the transferred property any substantial time in an effort to overcome the first two problems. In these cases, both the transferor and the transferee would incur raising costs, and in effect, the EDA would be divided between two taxpayers while only the transferee would

make sales subject to the EDA. This technique could lessen the amount recaptured at ordinary rates. Even if the transferee lost the capital gain treatment on sales proceeds, however, if his tax rate is less than the transferor's the negative tax effect is achieved.

[70] If the farming operation is diversified and if these operations consist of a grain operation producing large ordinary income and a livestock operation producing large ordinary deductions and cattle capital gains, the Metcalf Bill arguably can produce a negative tax by insulating the grain ordinary income from tax while subjecting the livestock profits only to capital gains. This result can be argued to be exactly the same as using excess livestock deductions to offset salary income while reporting livestock capital gains. While the force of this argument cannot be denied, there are at least two pertinent comments. First, even this result does nothing more than exempt farm profits from tax. There is no spillover of benefits into endeavors other than farming. Second, those taxpayers, investing in farm assets solely for tax purposes, seem likely not to have diversified farm operations. Whether enactment of the Bill would encourage diversification by "tax farmers" would depend on a number of considerations such as profit margins, interest rates, risks, alternative investments, and similar factors.

[71] 1963 TAX MESSAGE 1537–97; TAX REFORM 1969, at 2001–183. Since writing the text, the Senate Committee on Finance on September 22, 1969, has received testimony on farm losses.

[72] *See* 1963 TAX MESSAGE 144–45; 1963 TAX MESSAGE 1546 (statement of Stephen H. Hart); TREASURY STUDIES 16, all of which assert that the abuse lies in rewarding uneconomic, *i.e.* unprofitable, farm operations by granting tax profits. *See also* 1963 TAX MESSAGE 1581 (statement of Arthur Levitt), which focuses on the sale of livestock to investors at prices greater than fair market value.

[73] *See* 1963 TAX MESSAGE 1574 (statement of Jacquin D. Bierman); 1963 TAX MESSAGE 1540 (statement of Stephen H. Hart); 1963 TAX MESSAGE 1959 (statement of Floyd L. Madden); 1963 TAX MESSAGE 1569 (statement of James Trimble); TAX REFORM 1969, at 2155 (statement of Herrick K. Lidstone); TAX REFORM 1969, at 2035 (statement of Claude Maer); TAX REFORM 1969, at 2152 (statement of George D. Webster).

[74] 1963 TAX MESSAGE 1574 (statement of Jacquin D. Bierman); TAX REFORM 1969, at 2035 (statement of Claude Maer); TAX REFORM 1969, at 2107 (statement of R. H. Matthiessen, Jr.).

[75] *See* Sonabend v. Commissioner, 377 F. 2d 42 (1st Cir. 1967).

[76] *See* 1963 TAX MESSAGE 1587 (statement of Jay B. Dillingham); 1963 TAX MESSAGE 1566 (statement of William Greenough); 1963 TAX MESSAGE 1567 (statement of B. Earl Puckett). *See also* TAX REFORM 1969, at 2129 (statement of John Asay); TAX REFORM 1969, at 2125 (statement of George Hellyer); TAX REFORM 1969, at 2035 (statement of Claude Maer).

[77] *See* 1963 TAX MESSAGE 1588 (statement of Harold W. Humphreys), in which he claims that without the subsidy to livestock "the very necessary proteins would have been priced beyond the reach of millions of our consuming public." For an opposing view, expressed by one of the strongest advocates of the present tax subsidy, see Oppenheimer, *The Case For the Urban Investor*, 24 FARM Q. 80 (1969); 115 CONG. REC. 2033 (daily ed. Feb. 25, 1969) (reprint of speech given by Brig. Gen. H. L. Oppenheimer at the National Farm Institute, Des Moines, Iowa, Feb. 14, 1969).

[78] *See* 1963 TAX MESSAGE 1566 (statement of William Greenough).

[79] *See* note 77 *supra*.

[80] *See* TAX REFORM 1969, at 2035 (statement of Claude Maer); TAX REFORM 1969, at 2107 (statement of R. H. Matthiessen, Jr.); TAX REFORM 1969, at 1567 (statement of B. Earl Puckett).

[81] *See* 1963 TAX MESSAGE 1581 (statement of Arthur Levitt); Oppenheimer, *supra* note 77.

[82] TAX REFORM 1969, at 2132 (supplementary statement by Brig. Gen. H.L. Oppenheimer).

[83] The fair assumption is that all of this amount is deductible. The witness claimed that there was no revenue effect of the deduction because the payees would take the amounts into income.

[84] *See* TAX REFORM 1969, at 2035 (statement of Claude Maer); TAX REFORM 1969, at 2001 (statement of Jack Miller).

[85] U.S. DEP'T OF COMMERCE, CURRENT POPULATION REPORTS, CONSUMER INCOME, ser. P–60, No. 15, at 23 (Dec. 28, 1967).

[86] TREASURY STUDIES, *supra* note 18, at 158.

[87] U.S. TREASURY DEPARTMENT (unpublished tabulation of statistics of income).

[88] *See* 1963 TAX MESSAGE 1574 (statement of Jacquin Bierman); TAX REFORM 1969, at 2124 (statement of Jay B. Dillingham); TAX REFORM 1969, at 2107 (statement of R. H. Matthiessen, Jr.); TAX REFORM 1969, at 2120 (statement of Brig. Gen. H. L. Oppenheimer). *See also* Oppenheimer, *supra* note 77.

[89] *See* Letter from Secretary Snyder, *supra* note 16.

[90] 1963 TAX MESSAGE 1558.

[91] *See* PRESS RELEASE BY CHAIRMAN MILLS, *supra* note 52.

[92] *See* TAX REFORM 1969, at 5428, 5430 (Office of Secretary of the Treasury, Office of Tax Analysis, General Explanation of Farm Proposals, Tables 1 and 3).

[93] U.S. TREASURY DEPARTMENT (unpublished tabulation of statistics on income).

[94] H.R. REP. No. 91–413 (Part I), 91st Cong., 1st Sess. 16 (1969).

[95] TAX REFORM 1969, at 5058.

[96] 115 CONG. REC. 9898 (daily ed. Aug. 13, 1969) (remarks of statistics of Senator Metcalf).

[97] U.S. TREASURY DEPARTMENT (unpublished tabulation of statistics of income).

[98] TREASURY STUDIES 158. The proposal put forth by the Treasury Department in this document should reach about the same number of taxpayers as the Metcalf Bill. The estimate is 14,000 returns.

[99] The Treasury Department has estimated that the special accounting rules cost about $800 million annually. *Hearings on the 1969 Economic Report of the President Before the Joint Economic Comm.*, 91st Cong., 1st Sess. 36 (1969) (supplementary statement of Joseph W. Barr). If the revenue raised under these alternatives then is an index of effectiveness, the House Bill would be 2.5% effective; the Treasury's EDA would be 6.25% effective; and the Metcalf Bill would be just over 25% effective.

Several averages may be derived from 1964 figures published as Table 3 to the General Explanation of the Treasury's Farm Proposal. TAX REFORM 1969, at 5430. The raw data presented there are:

(a) All tax returns showing more than $50,000 nonfarm adjusted gross income with a farm loss numbered 14,325 with aggregate farm losses of $369,005,000, an average of $25,800. If we assume a 50% marginal tax bracket, the average farm loss has an average value of $12,900. If ultimately there are capital gain sales equal to the average farm loss, the taxes paid would be $6,650 under the Bill while under present law the taxes would be $6,450. Thus the Bill on the average would remove but $200 of the tax subsidy. This amount of reduction would hardly discourage anyone because the tax subsidy is over thirty times the recaptured tax.

(b) The above figures could be broken down into nonfarm adjusted gross income categories as follows:

$50,000 to $100,000 nonfarm adjusted gross income:

10,036 returns showing an average loss of $16,487. On the *average* the Bill would have no effect.

$100,000 to $1,000,000 nonfarm adjusted gross income:

4,204 returns showing an average loss of $46,908. If we assume a 65% tax rate (maximum under the Bill), the loss would have a current value of $30,490 on the average. If there were ultimately capital gains equal to the loss, the taxes incurred giving effect to EDA would be $22,365 leaving a negative tax benefit of $8,125. Again this is hardly sufficient deterrent to be effective.

Over $1,000,000 nonfarm adjusted gross income:

85 returns showing an average loss of $81,576. Again assuming a maximum rate of 65%, the loss would have a current value of about $53,000. Ultimately taxes of nearly $45,000 would be paid if EDA were fully effective. Again there is something less than full recovery of the tax subsidy, and the deferral benefit remains.

[100] 115 CONG. REC. 4354 (daily ed. May, 1969) (remarks of Senator Metcalf). In a press release, dated October 17, 1969, the Senate Finance Committee announced that it had decided to disallow one-half of the farm loss in excess of $25,000 in those cases in which the nonfarm adjusted gross income exceeded $50,000, and the farm loss exceeded $25,000. This approach is at best a very poor substitute for Senator Metcalf's Bill. While the press release is not entirely clear, apparently there is no effort to confine the disallowance to losses created by the special accounting rules. The income and loss limits are still excessive. It does, however, take a step in the right direction by disallowing losses. At this writing, estimates for revenue and the number of taxpayers affected are not available.

HOUSE OF REPRESENTATIVES—*Monday, March 2, 1970*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

He leadeth me in the paths of righteousness for His name's sake.—Psalm 23: 3.

Our Heavenly Father, mindful of our responsibilities as the leaders of our people we bow before Thee praying that we may be led in right paths for the sake of our beloved America. May Thy spirit guide us that we be saved from false choices and be lifted to new heights of creative endeavor and courageous action. Together as leaders and people may we be physically strong, mentally awake, morally straight, and religiously alive.

We pray for the family of our beloved colleague who has gone home to be with Thee. We are grateful for his devotion to the district he represented, for his dedication to our country he loved with all his heart, and for his faith in Thee which held him steady throughout his life. May the comfort of Thy presence abide with his family and may the strength of Thy spirit dwell in all our hearts.

In the Master's name we pray. Amen.